

*Note*

*In order to give effect to the Cross-border Justice Act, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act as if this law had been altered in that way.*

*For modifications of this law prescribed by regulation, see Part 3, Division 8 of the Cross-border Justice Regulations.*

**NORTHERN TERRITORY OF AUSTRALIA**

**JUSTICES ACT**

As in force at 1 September 2012

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#### **Schedule 3**

#### **ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 September 2012. Any amendments that commence after that date are not included.

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## JUSTICES ACT

### An Act relating to Justices of the Peace

#### Part I Preliminary

##### 1 Short title

This Act may be cited as the *Justices Act*.

##### 2 Commencement

This Act shall commence on a date to be fixed by the Government Resident by notice in the *North Australia Gazette*.

##### 4 Interpretation

In this Act, unless the contrary intention appears:

***child*** means a person under the age of 18 years.

***clerk*** means the Registrar referred to in section 42.

***committal brief*** means a brief served under section 105C, including any additional documents forming part of the brief under section 105D(3)(b) or 105E(3)(b).

***committal date***, for Part V, see section 100.

***complainant***, for Part VII, Division 3, see section 189.

***complaint***.

(a) includes a charge of minor indictable offence if, and when, a Court of Summary Jurisdiction proceeds to dispose of the charge summarily; and

(b) for Part VII, Division 3 – see section 189.

***Court of Summary Jurisdiction*** or ***Court*** means Justices forming the Court for the purposes of hearing and adjudicating upon any case or matter which they have power to determine in a summary manner, and whether they are acting under this Act or under any other Act incorporated herewith, or by virtue of their commissions, or under the common law.

***defendant.***

(a) for Part VIA – see section 80; or

(aa) for Part VII – see section 189; or

(b) otherwise – means a person charged with an offence or against whom relief is sought.

***fine*** includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable upon a finding of guilt.

***gaol*** includes any prison or other place in which imprisonment or detention is authorised by law according to the circumstances of the case.

***guardian*** in relation to a child includes any person who, in the opinion of the Justices having cognisance of any case in which a child is concerned, has, for the time being, the charge of, or control over, the child.

***handed-up witness statement,*** for Part V, see section 100.

***keeper of a gaol*** includes any superintendent, keeper, or other chief officer of a gaol.

***listed exhibit,*** for Part V, see section 100.

***listed witness,*** for Part V, see section 100.

***minor indictable offence*** means indictable offence which is capable of being, and is, in the opinion of the Justice before whom the case comes, fit to be heard and determined in a summary way under the provisions of Division 2 of Part V.

***notice to appear,*** for Part VII, Division 3, see section 189.

***personal violence offence,*** for Part IVA, see section 80.

***personal violence restraining order,*** for Part IVA, see section 82.

***preliminary examination*** means an examination under section 105A.

***prosecutor***, for Part V, see section 100.

***protected person***, for Part IVA, see section 80.

***recorded***, for Part V, see section 100.

***serious violence offence*** means an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by the Regulations.

***simple offence*** means offence or act for which a person is liable by law, upon a finding of guilt before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished. but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence.

***Special Act*** means statute, Act, rule, regulation, or by-law authorising the making of the finding of guilt or order, or the determination or adjudication in question, or otherwise specially applicable to the case.

***sum adjudged to be paid by a finding of guilty*** and ***sum adjudged to be paid by an order*** respectively include any costs adjudged to be paid by the finding of guilt or order (as the case may be) of which the amount is ascertained by the finding or order.

## **9 Incorporation with past and future Acts and Ordinances**

- (1) Wherever any Ordinance or Act, past or future, or any rule, regulation, or by-law made under or by virtue of any Ordinance or Act:
  - (a) constitutes any act or omission a simple offence; or
  - (b) provides that any sum may be recovered, by summary proceedings or summarily, before a Court of Summary Jurisdiction or before a Justice or Justices; or
  - (c) provides that any order may be made by a Court of Summary Jurisdiction, or by a Justice or Justices in a summary way,

the Ordinance, Act, rule, regulation, or by-law shall, unless the contrary intention appears, be deemed to refer to this Act, and this Act shall for that purpose be incorporated with such other Ordinance or Act.

- (2) When in any other Ordinance or any Act the term *information* is used in relation to a simple offence or to any other matter determinable by a Justice or Justices in a summary way that term shall, for the purposes of this Act, be deemed to refer to and to mean a complaint under this Act.

## **Part II                    Justices**

### **14            Issue of summons etc.**

- (1) All summonses, warrants, findings of guilt, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands of the Justices issuing or making them.
- (2) A Justice may receive any information or complaint and may grant or issue any warrant or summons on a Sunday as well as any other day.

## **Part III                    General procedure**

### **Division 1            Form of warrant and summons**

#### **20            Form of warrant**

- (1) Every warrant for the apprehension of a defendant shall:
- (a) state shortly the matter of the information or complaint upon which it is founded; and
  - (b) name or otherwise describe the defendant; and
  - (c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the Justice issuing it, or before some other Justice, to answer the charge contained in the information or complaint, and to be further dealt with according to law.

- (2) The warrant may be directed specially to any constable or other person by name, or generally to all constables and peace officers of the Territory, or both specially and generally as aforesaid; and where the warrant is directed generally it shall be lawful for any constable or other peace officer to execute the warrant in like manner as if it had been specially directed to him by name.
- (3) It shall not be necessary to make the warrant returnable at any particular time, but it shall remain in force until it is executed.
- (4) Every warrant may be executed by apprehending the defendant at any place within the Territory.

## **22                  Form of summons**

- (1) Subject to this section, every summons for the appearance of a defendant shall be in duplicate and shall:
  - (a) be directed to the defendant charged by the information or complaint; and
  - (b) state shortly the matter so charged; and
  - (c) require the defendant to be and appear at a certain time and place therein mentioned, before such Justice as shall then be there, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.
- (2) A summons issued under section 57(2) shall be in triplicate and in accordance with the form in Schedule 3.

## **22A                Description of offence in documents under this Act**

- (1) Any information, complaint, summons, warrant or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.
- (2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by any law of the Territory, shall contain a reference to the section of the law of the Territory creating the offence.
- (3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.

- (4) Any information, complaint, summons, warrant or other document to which this section applies, which is in such form as would have been sufficient in law if this section had not come into force, shall, notwithstanding anything contained in this section, continue to be sufficient in law.

## **Division 2            Witnesses**

### **23            Summons to witness**

If a Justice or the clerk is satisfied that any person is likely to give material evidence or to have in his possession or power any article (which term includes any document, writing, or thing) required for the purposes of evidence upon behalf of either party to any information, complaint or application, the Justice or clerk may issue a summons to the person requiring him to appear, at a time and place mentioned in the summons, before such Justices as shall then be there, to testify what he knows concerning the matter of the information, complaint or application, or to produce the article, or to testify and produce as aforesaid (as the case may be).

### **25            Warrant in first instance**

If a Justice is satisfied, by evidence upon oath, that it is probable that any person will not attend to give evidence or to produce any article without being compelled to do so, then, instead of issuing a summons as provided by section 23, he may issue his warrant in the first instance.

### **26            Witness refusing to give evidence may be committed to gaol**

Any Justice before whom any person appears or is brought upon summons or warrant, to give evidence or to produce any article may, if the person without offering any just excuse refuses:

- (a) to be examined upon oath concerning the premises; or
- (b) to take the oath; or
- (c) to answer after having taken an oath such questions concerning the premises as are then put to him; or

(d) to bring or produce any such article,

by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding 7 days, unless in the meantime he consents to be examined and to answer concerning the premises, or to produce the article (as the case may be): Provided that no person shall be bound to produce any article not specified or otherwise sufficiently described in the summons, or any document or writing which he would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

## **26A      Power to require evidence from persons present in court**

- (1) Any Justice may, on the application of any party to the proceedings, require any person in the court room or other place where he is sitting for the hearing of any complaint or information to take an oath and give evidence concerning the matter of that complaint or information.
- (2) If any person so required refuses to take an oath or without offering any just excuse refuses to answer any question put to him concerning the matter of the complaint or information, or if any person voluntarily appearing as a witness without offering any just excuse refuses to answer any such question, the Justice may by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding 7 days, unless in the meantime he consents to be examined and to answer the question put to him.

## **Division 3      Service**

### **27      Service of summonses and notices under this Act**

Subject to the provisions of this or any other enactment specially applicable to the particular case, any summons or notice required or authorised by this Act to be served upon any person, may be served upon the person by:

- (a) delivering it to him personally; or
- (b) leaving it for him at his last or most usual place of abode or of business with some other person, apparently an inmate thereof or employed thereat, and apparently not less than 16 years of age.

**27A      Service of summons under section 57(2)**

- (1) A summons issued under section 57(2) to a person other than a corporation may be served on a defendant:
  - (a) by delivering 2 copies of the summons to the defendant personally; or
  - (b) subject to subsection (2), by leaving 2 copies of the summons for the defendant at his last-known place of abode or business with a person apparently an inmate or employed at that place and apparently not less than 16 years of age; or
  - (c) subject to subsections (2) and (3), by posting by registered post service, as provided under the *Australian Postal Corporation Act 1989* of the Commonwealth, 2 copies of the summons to the defendant at his last-known place of abode or business.
- (2) If a certificate of the clerk given under section 57(3) is to be served on the defendant, the summons shall also be served on the defendant personally.
- (3) A summons served under subsection (1)(c) on a defendant shall be served:
  - (a) if the offence alleged in the summons is an offence in respect of which a traffic infringement notice, within the meaning of Part 3 of the *Traffic Regulations*, may be served – not later than 90 days after the date of the alleged offence; or
  - (b) in any other case – not later than 60 days after the date of the alleged offence,and not earlier than one month before the date shown on the summons as the date for the hearing of the charge to which that summons relates.
- (4) A summons issued under section 57(2) to a corporation may be served on the corporation:
  - (a) by delivering 2 copies of the summons to a director, secretary, or other responsible officer of the corporation; or
  - (b) by posting by registered post service, as provided under the *Australian Postal Corporation Act 1989* of the Commonwealth, 2 copies of the summons to the principal place of business of the corporation in the Territory.
- (5) In the absence of evidence to the contrary, the address appearing



on the summons shall be deemed to be the defendant's last-known place of abode or business.

- (6) Where a summons has not been served personally, the Court or a Justice may, if it or he is of the opinion that there is a reasonable probability that the summons has not come to the notice of the defendant, refuse to adjudicate upon the complaint and direct that a fresh summons be issued and served personally on the defendant.

## **28      Proof by affidavit of service of process, handwriting etc.**

- (1) In any proceeding within the jurisdiction of Justices, without prejudice to any other mode of proof:
- (a) the service on any person of any summons, notice, process, or document required or authorised to be served; or
  - (b) the handwriting of any Justice or other officer or person on any warrant, summons, notice, process, or document;

may be proved by an affidavit: Provided that the Justices may require the person making the affidavit to be called as a witness, or may require further evidence of the facts.

- (3) If any affidavit made under this section is untrue in any material particular, the person wilfully making the false affidavit shall be guilty of wilful and corrupt perjury, and shall be punishable accordingly.
- (4) Service of a summons issued under section 57(2) may, without prejudice to any other mode of proof, be proved by a receipt for registered post service issued under the *Australian Postal Corporation Act 1989* of the Commonwealth and bearing the serial number referred to in evidence as the number relating to the summons sent by that registered post service and by a written receipt under those Regulations purporting to be duly completed and acknowledging receipt of that registered post service article.
- (5) The receipt and returned receipt of registered post service are admissible at the hearing of the summons as prima facie evidence that the summons was received by the address of the article and of the matters set out in them.

## **Division 4      Assistance of counsel**

### **29      Parties to have assistance of counsel**

Every party to any proceeding before Justices shall be at liberty to conduct his case or to make his application or his full answer to the charge or complaint (as the case may be) and to have the witnesses examined and cross-examined, by a legal practitioner: Provided that nothing herein contained shall be deemed:

- (a) to dispense with the personal attendance before the Justice of any defendant who is charged with an indictable offence; or
- (b) to authorise Justices to proceed to hear or to hear and determine any charge of an indictable offence in the absence of the defendant.

## **Division 5      Recognisances**

### **31      Discretion of Justices as to amount and sureties**

Every recognisance shall be for such amount and with such surety or sureties as the Justice taking the recognisance thinks fit to ensure the due fulfilment of the conditions thereof: Provided that, in the case of a recognisance taken under section 33 it shall be for such amount, and with such surety or sureties, as the Justice authorising the taking thereof thinks fit.

### **32      Justice may fix amount of recognisance and sureties**

Where a Justice is authorised to take a recognisance, or when any recognisance is required to be entered into before a Justice, the Justice may fix the amount or amounts in which the principal and sureties are to be bound, and the recognisances may then be entered into as provided in section 33.

### **33      Recognisances taken out of Court**

- (1) A recognisance need not be entered into before a Justice but may be entered into before any clerk or before an inspector of police or other officer of police of equal or superior rank or any member of the police force in charge of any police station, or where any of the parties is in gaol before the keeper of the gaol: Provided that no Justice, and no clerk, officer of police, member of the police force or keeper of a gaol shall take the recognisance of any person proposed as a surety unless the person so proposed first makes an affidavit or declaration of justification in the prescribed form.

- (2) Where, as a condition of the release of any person, he is required to enter into a recognisance with sureties, the recognisance of the sureties may be taken separately, and either before or after the recognisance of the defendant; and, if so taken, the recognisances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

**33A        Extension of provisions for taking recognisance out of Court**

Section 32 and 33 shall apply and be deemed always to have applied in any case where the Court of Summary Jurisdiction is authorised to take a recognisance or where any recognisance is required to be entered into before the Court of Summary Jurisdiction.

**33B        Court may order commitment in default**

If a person enters into a recognisance as a principal, the Court of Summary Jurisdiction constituted by a magistrate sitting alone may order that, if the recognisance is forfeited, the person is to be committed by warrant to a gaol for a specified period in default of payment.

**Division 6        Security**

**34        Security under this Act to be given by deposit with or acknowledgement to clerk of the Court**

Any security required or permitted to be given under this Act shall be given, whether by principal or surety, either:

- (a) by the deposit of money with a clerk; or
- (b) by a written acknowledgement given to a clerk of the undertaking or condition by which, and of the sum for which, the principal or surety is bound:

Provided that the security shall be given in such of the modes aforesaid as the Court or person authorising the taking of the security may order or direct.

**35 Entry of security and evidence thereof**

- (1) Every clerk shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the Court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken.
- (2) The security book, and also any extract therefrom certified by the clerk, shall be prima facie evidence of the several matters hereby required to be entered therein.

**36 Indemnity of surety by principal**

Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges, and expenses incurred by the surety in respect of that security, shall be deemed a debt due to him from the principal, and shall be recoverable either summarily under this Act, or in any civil court of competent jurisdiction.

**37 Security to be enforced in substitution of other remedies**

Where security is given under this Act for payment of a sum of money, the payment of the sum shall be enforced by means of the security in substitution for any other means of enforcing the payment.

**Division 7 Enforcement of recognisances and securities**

**38 Justice's certificate of non-compliance with conditions, prima facie evidence of forfeiture**

- (1) Whenever the conditions, or any of the conditions, mentioned in any recognisance or security are not complied with, any Justice may certify in what respect the conditions have not been observed, and the certificate shall be prima facie evidence of the non-compliance, and of the recognisance or security having been forfeited.

**39 Enforcement of recognisances**

- (1) Upon proof of any breach of the condition, or of any of the conditions, of any recognisance or security, or upon other proof of the forfeiture thereof, any 2 Justices may make an order adjudging the recognisance or security to be forfeited and for payment of any amount due thereunder.

- (2) No order shall be made under this section in the absence of any person sought to be bound thereby unless it is proved, to the satisfaction of the Court, that a summons was duly served upon the person at least 7 clear days before the return thereof.
- (3) Every order under this section is to be enforced under the *Fines and Penalties (Recovery) Act* unless the Court in accordance with section 33B orders commitment in default of payment.

#### **40            Suspension or mitigation of forfeiture**

- (1) Upon an application for an order adjudging a recognisance or security to be forfeited, the Justices to whom the application is made may order that the liability of all or any of the persons liable upon or in respect of the recognisance or security shall be remitted, suspended, or reduced.
- (2) Where an order has been made adjudging a recognisance or security to be forfeited, any 2 Justices may at any time, whether goods have or have not been sold under a warrant of distress issued to enforce the order, make any of the following orders which they deem just:
  - (a) that the forfeiture and any order for payment of any amount due under the recognisance or security be cancelled or suspended; and
  - (b) that the liability of all or any of the persons liable upon or in respect of the recognisance or security shall be remitted, suspended or reduced.
- (3) The Justices making an order under subsection (2) may:
  - (a) impose any terms and conditions which they deem just; and
  - (b) make any order consequential on or incidental to any such order.
- (4) An order made under this section shall not affect the validity of any thing done to enforce the forfeiture of the recognisance or security before making the order.

#### **41            Application of moneys received on enforcement**

- (1) The order for payment of any amount due under any recognisance or security shall direct that the amount be paid to the clerk, and the Court may further direct that the sum paid, or such portion thereof as may be just, be paid by the clerk, upon receipt thereof, to any person in whose interest the recognisance or security was taken.

- (2) Subject to any direction under subsection (1) the clerk of the Court shall apply any amount paid under any order made under section 39 in the manner in which fines are applied of which no special appropriation is made.

## **Part IV            Summary jurisdiction**

### **Division 1        Courts of Summary Jurisdiction**

#### **41A        The Court of Summary Jurisdiction**

There is hereby established a court to be known as the Court of Summary Jurisdiction.

#### **42        Clerk of Court**

- (1) A Registrar of the Local Court is a clerk of the Court of Summary Jurisdiction.
- (2) If the Court is required to perform its functions at a place outside the Territory, the Minister may appoint as a clerk of the Court at the place:
- (a) a person who holds office as a registrar or deputy registrar of a court of the jurisdiction in which the place is located; or
  - (b) another appropriately qualified person.
- (3) The conditions of service (including as to remuneration) of the appointed person are those that the person is entitled to under the law of the other jurisdiction.
- (4) A person appointed under subsection (2)(a) ceases to hold office if the person ceases to hold office as a registrar or deputy registrar of a court of the other jurisdiction.
- (5) With the approval of the Minister, a clerk of the Court may concurrently hold office as a registrar or deputy registrar of a court of another jurisdiction.
- (6) In this section:

***remuneration*** includes salary, allowances, fees, emoluments and benefits (whether in money or otherwise).

### **43 Constitution of Courts of Summary Jurisdiction**

- (1) Subject to this section, every matter of complaint shall (unless the provisions of some Act otherwise require) be heard and determined by:
  - (a) a Magistrate, if there is any Magistrate present who is competent and willing to act; or
  - (b) if there is no such Magistrate present, then by 2 or more Justices.
- (2) A single Justice may hear and determine a matter of complaint where:
  - (a) the matter of complaint is that the defendant has committed an offence against a law in force in the Territory; and
  - (b) the offence is an offence that is not punishable by a term of imprisonment; and
  - (c) the penalty that may be imposed for the offence is a maximum penalty of, or of not more than an amount equal to, 0.8 of a penalty unit; and
  - (d) the complainant and the defendant consent in writing to a single Justice hearing and determining the matter.

### **44 Powers of a single Justice**

In any case, whether the matter of complaint is or is not directed or required to be heard by 2 or more Justices, a single Justice may do any or all of the following:

- (a) receive the complaint;
- (b) grant a summons or warrant thereon;
- (c) issue his summons or warrant to compel the attendance of any witness;
- (d) by consent of the parties expedite the date of hearing;
- (e) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;
- (f) do all other acts and matters preliminary to the hearing;
- (g) issue any warrant of distress or commitment upon any finding of guilt or order.

**45 Interlocutory proceedings need not be before same Justices**

It shall not be necessary for any Justice who acts before or after the hearing to be the Justice, or one of the Justices, by whom the case is heard; but wherever it is necessary for any matter of complaint to be heard and determined or for a finding of guilt or order to be made by 2 or more Justices, such 2 or more Justices must be present and acting together during the whole of the hearing and determination of the case.

**46 Contempt of Court**

(1) Any person who:

- (a) wilfully interrupts the proceedings of the Court; or
- (b) conducts himself disrespectfully to the Justice or Justices during the sittings thereof; or
- (c) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the Court; or
- (d) wilfully disobeys any order made by the Court under section 61(2);

shall be guilty of an offence.

Maximum penalty: \$20 or imprisonment for one month.

(2) Any person who in the opinion of the Justice or Justices wilfully prevaricates in giving evidence to the Court of Summary Jurisdiction shall be guilty of an offence.

Maximum penalty: \$20 or imprisonment for one month.

(3) The Justice or Justices constituting the Court in whose presence any offence under this section is committed may forthwith convict the person guilty of the offence, either on their own view or on the oath of some credible witness, and may issue their warrant of commitment accordingly.

(4) Every warrant of commitment under this section shall be good and valid in law without any other order, summons, or adjudication whatsoever.

(5) If any person found guilty of any offence under subsection (1) makes to the convicting Justices, before the rising of the Court, such an apology for the interruption or misbehaviour as they in their uncontrolled discretion deem satisfactory the Justices may, if they think fit, remit the penalty either wholly or in part.



**47                      Proceedings to be brought in most convenient Court**

- (1) Upon the hearing of any complaint or application before the Court the defendant may, before any evidence is given, object that there is a proper place at which the Court might be held more easy of access than the place where the Court is then sitting, not only from the place of abode of the defendant, but also from the place where the subject-matter of the complaint or application arose.
- (2) The Court may hear any evidence adduced and, if it appears to the Court that the objection is well founded, it may hear the complaint or application at that other place.

**48                      Compensation may be awarded in vexatious cases**

Whenever any objection under section 47 is established to the satisfaction of the Court, and the person making the objection complains at once to the Court that he has been brought to the place where the Court is held vexatiously and oppressively, the Court shall forthwith, and without any further summons or notice, proceed to hear and determine the matter of the objection in a summary way, and if the Court is of opinion that such is the fact it may order the complainant or the applicant to pay to the person making the objection, by way of compensation or amends, such sum not exceeding \$10 as it may think fit, and in default of payment the sum so awarded may be enforced by imprisonment for any period not exceeding 7 days.

**Division 2                      The complaint and the proceedings thereon**

**49                      Complaint**

A complaint may be made to a Justice in any case where:

- (a) any person has committed, or is suspected to have committed, any simple offence; or
- (b) a Justice or Justices has, or have, authority by law to make any order for the payment of money or otherwise.

**50                      How laid**

- (1) A complaint may be made by the complainant in person or by his counsel or solicitor, or by any other person authorised in that behalf.
- (2) No complaint need be in writing unless it is required to be so by some Special Act.

- (3) A complaint may be made without any oath being made of the truth thereof, except in any case:
- (a) where some Special Act otherwise requires; or
  - (b) where the Justice issues his warrant in the first instance.

## **51 Joinder of charges**

- (1) Charges for any number of offences may be joined in the same complaint, if the charges arise out of the same set of circumstances.
- (2) Where a provision constituting an offence states the offence to be the doing of or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the provision, may be stated in the alternative in the complaint.
- (3) The Court may, if it thinks just, deal with any charge so joined, separately.
- (4) This section shall apply notwithstanding anything inconsistent therewith contained in the Special Act.

## **52 Limitation of time for laying information**

Where no time is specially limited for making the complaint by any statute or law relating to the particular case, the complaint shall be made within 6 months from the time when the matter of the complaint arose.

## **53 Punishment of aiders and abettors in the commission of offences**

Every person who aids, abets, counsels, or procures the commission of any simple offence may be proceeded against and found guilty of the offence, either together with the principal offender, or before or after the finding of guilt, and shall be liable upon the finding of guilt to any penalty to which the principal offender is or was liable, or would be liable if he were found guilty.

**54 Allegations as to ownership**

- (1) Whenever in any complaint, or the proceedings thereon, it is necessary to state the ownership of any property belonging to, or in the possession of, partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of those persons, and to state the property to belong to the person so named and another or others (as the case may be).
- (2) Whenever in any complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the same manner.
- (3) Whenever in any complaint or the proceedings thereon it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any public board of commissioners or trustees, or of any materials for the making, altering, or repairing of the work or building, it shall be sufficient to describe the work or building or materials as the property of the commissioners or trustees without naming them.

**55 Description of offence**

In any complaint and in any proceedings thereon the description of any offence in the words of the Special Act or other document creating the offence, or in similar words, shall be sufficient in law.

**56 Exceptions or exemptions need not be specified or disproved by the complainant**

- (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negated in the complaint.
- (2) Any exception, exemption, proviso, excuse, or qualification referred to in subsection (1) may be proved by the defendant, but, whether it is or is not specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

**57 Upon complaint summons to issue**

- (1) Whenever a complaint is made in accordance with this Part any Justice may issue his summons for the appearance of any person charged by the complaint or against whom the order is thereby sought to be made: Provided that nothing herein mentioned shall oblige any Justice to issue his summons in any case where the application for any order of Justices is by law to be made ex parte.

- (2) Where a complaint is made by a public officer charging that an offence to which this subsection applies has been committed, the Justice may, upon the request of the complainant issue a summons in accordance with section 22(2).
- (3) Where the defendant to a complaint in a summons issued under subsection (2) has previously been found guilty of another offence, the clerk may give a certificate under his hand:
  - (a) alleging that the defendant has been so found guilty of that offence; and
  - (b) stating that the certificate is admissible at the hearing of the summons as prima facie evidence of the matters alleged.
- (4) The certificate is admissible as prima facie evidence of the matters alleged if a copy of the certificate is served on the defendant personally at the same time as the summons is served on him.
- (5) For the purposes of subsection (2):
  - (a) an offence to which that subsection applies is an offence:
    - (i) against the *Traffic Act* or the Regulations made under that Act; or
    - (ii) against the *Motor Vehicles Act* or the Regulations made under that Act; or
    - (iii) punishable by a fine only; and
  - (b) ***public officer*** means:
    - (i) a member of the Police Force of the Northern Territory; or
    - (ii) a person employed by an authority or corporation established under a law of the Territory and authorised by or under that law to make a complaint charging an offence against a law in force in the Territory; or
    - (iii) an officer or employee of the Public Service of the Commonwealth or of the Territory acting in the course of his employment as such an officer or employee.

**57A Plea of guilty may be made in writing if summons in form of Schedule 3**

- (1) A person upon whom is served a summons in the form in Schedule 3 may plead guilty to the charge specified therein by:
  - (a) completing the endorsement appearing on a copy of the summons; and
  - (b) signing (whether within or without Australia) the endorsement, so completed, before a person entitled to administer an oath in any part of Australia or before a lawyer or member of the police force of the Commonwealth or of a State or Territory; and
  - (c) delivering or serving by post, not less than 3 days prior to the date on which he is required by the summons to appear, the copy of the summons so completed and signed to the complainant or the clerk of the Court of Summary Jurisdiction at the place at which he is required to appear.
- (2) Service of the copy of the summons duly completed and signed shall be deemed to have been effected under subsection (1) if it is left at the office of the clerk of the Court of Summary Jurisdiction before which the defendant is required to appear or if it is left at any police station within 80 kilometres of the place at which appearance is required by the summons.
- (3) A person who has pleaded guilty in the manner prescribed by this section is not required to appear in person or otherwise at the Court before which he is summoned to appear.
- (4) The Court may accept a plea of guilty made by endorsement as prescribed by this section without proof of any signature thereon or of the office or occupation of any person purporting to have signed the endorsement and, subject to section 57B, may proceed in such manner and make such adjudication and orders as it might have made if the defendant had appeared in answer to the summons in person or by counsel.

**57B Limits on power of Court where plea of guilty in writing**

Where a person has pleaded guilty in the manner prescribed by section 57A, the Court shall not:

- (a) impose a sentence of imprisonment in the first instance; and
- (b) cancel or suspend a licence held by the defendant or otherwise disqualify him from holding a licence; and

- (c) treat the offence as other than a first offence unless the Court is satisfied upon evidence that the defendant has been previously found guilty as stated in the certificate of the clerk given under section 57(3); and
- (d) fail to allow a reasonable time for payment of any sum adjudged to be paid by the defendant; and
- (e) order the defendant to pay any sum in respect of the attendance of any witness.

**57C Notice of finding of guilt or plea of guilty in writing to be first served**

Where a person has been found guilty of an offence to which he has pleaded guilty in the manner prescribed by section 57A, the clerk of the Court in which the finding of guilt was recorded shall forthwith serve, personally or by post, on the defendant notice of the finding of guilt and of any order or sentence made on that finding of guilt and no further proceedings upon the finding of guilt or order shall be taken until the expiry of 14 days after such service.

**57D Court may refuse to accept plea of guilty in writing**

Where, upon its consideration of the subject matter of a complaint to which a defendant has pleaded guilty as prescribed by section 57A or of any explanation endorsed by a defendant upon a copy of a summons issued upon such a complaint, the Court is of the opinion:

- (a) that the offence may be one which merits punishment other than a fine; or
- (b) that the defendant did not understand the consequences of his submitting a written plea of guilty; or
- (c) that for some other reason justice would be better served by requiring the appearance of the defendant in person,

the Court shall vacate the summons issued and shall order that a summons in the form prescribed by the regulations shall issue.

**57E Further consideration of complaint may be required**

- (1) Where a summons has been issued under section 57(2) and a finding of guilt has been recorded in the absence of the defendant, the defendant may, within 7 days after service upon him of a notice under section 57C, serve either personally or by post on the clerk of the Court in which the finding of guilt was recorded a notice requiring further consideration of the complaint upon which the

finding of guilt was recorded.

- (2) Upon service of a notice under subsection (1), no proceedings shall be taken to enforce the finding of guilt or any order made thereon until after the proceedings consequent upon that notice have been completed.
- (3) As soon as is practicable after service on him of a notice under subsection (1), the clerk of the Court so served shall fix a time and place for the further consideration of the complaint and, by notice served personally or by post, notify the complainant and defendant of the time and place so fixed.
- (4) On the day fixed under subsection (3), the Court (which need not be formed by the same persons who formed the Court which recorded the finding of guilt in the first place):
  - (a) may quash the finding of guilt and vacate any orders made thereon if it is satisfied that the summons first issued on the complaint did not come to the notice of the defendant a reasonable time before the date appointed by the summons for the hearing; and
  - (b) direct that the complaint shall be reheard at a time and place then fixed by the Court; or
  - (c) confirm the finding of guilt and any orders made thereon.
- (5) The Court before which a complaint is reheard in pursuance of a direction under subsection (4) has power to adjudicate thereon as if the rehearing was the first hearing of the complaint and the defendant had been personally served with a summons requiring his attendance on the day fixed by the direction.

## **58                      Issue of warrant**

- (1) No warrant to apprehend any defendant shall be issued unless the matter of the complaint is substantiated to the satisfaction of the Justice upon oath made before him.
- (2) When the matter of any complaint:
  - (a) charging the defendant with the commission of a simple offence; or
  - (c) under any Special Act which authorises the issue of a warrant in the first instance,

is substantiated as provided in this section a Justice may, instead of issuing his summons, issue his warrant in the first instance to apprehend the defendant.

- (3) If any defendant fails to appear in obedience to a summons any Justice may issue his warrant for the apprehension of the defendant, provided that:
- (a) the matter of the complaint is substantiated as provided in this section; and
  - (b) it is proved to the satisfaction of the Justice that the summons was duly served (what he deems) a reasonable time before the time appointed for the hearing.

**59                      Defendant on apprehension to be brought before Justice**

When a defendant is apprehended under a warrant he shall be brought before a Justice, who shall thereupon commit him into custody or grant him bail in accordance with the *Bail Act*.

**60                      Remand or discharge on bail**

- (1) Where a defendant is apprehended under a warrant or where, from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the defendant's hearing, the Justice before whom that defendant is brought or appears may remand, and that Justice or another Justice may, from time to time, further remand that defendant for such period as that Justice thinks fit, but not exceeding 15 clear days at any one time unless both parties consent thereto.
- (2) Where a Justice remands under subsection (1) or (3) a defendant, the Justice shall, in respect of the defendant's period of remand or further period of remand, as the case may be, commit that defendant:
- (a) by warrant to the nearest prison or to some place of security;  
or
  - (b) orally to the custody of the constable or other person who apprehended him; or
  - (c) orally to such other safe custody as the Justice thinks fit,

and that Justice shall order that defendant to be brought up at some stated time and placed before such Justice or Justices as shall then be there, of which order the clerk shall give the complainant due notice.



- (3) A Justice, on being satisfied that a defendant who has been remanded under subsection (1) and committed into custody in accordance with subsection (2) is, by reason of illness or accident, unable at the expiration of the period for which he was remanded under subsection (1) to appear personally before a Justice may, in the absence of the defendant, further remand that defendant for such period as the Justice thinks fit, but not exceeding 15 clear days at any one time.
- (4) Where a Justice, for the purposes of a further period of remand referred to in subsection (3), commits under subsection (2)(a) a defendant, the warrant required by that second-mentioned subsection may be issued by the Justice further remanding the defendant or by any other Justice.
- (5) A Justice may, instead of committing under subsection (2) a defendant, grant the defendant bail in accordance with the *Bail Act*.

### **Division 3      The Hearing**

#### **60A      Where Court may be held**

- (1) The Court may sit in the locations (including a place outside the Territory) the Minister directs and in any building approved by the Minister for the holding of the Court.
- (2) The Minister must ensure the places for the Court to sit have adequate and appropriate facilities for the Court's proceedings.
- (3) Despite subsection (1), if the Court considers it is expedient to sit in another place, the Court may sit in the other place.

#### **61      Sittings to be in open Court but witnesses and other persons may be ordered to leave the Court**

- (1) The room in which the Court sits shall be deemed an open and public Court, to which the public generally may have access so far as the room can conveniently contain them, and subject to this section.
- (2) The Court may, if it thinks fit, order that all witnesses (except the parties and any of their witnesses whom it sees fit to except) shall go and remain outside and beyond the hearing of the Court until required to give evidence.
- (3) Nothing contained in this section shall require any case to be heard in open Court if it is, by any Special Act, required or authorised to be heard in camera.

**62 On non-appearance of defendant Court may issue warrant or proceed ex parte**

If the defendant fails to appear in obedience to the summons the Court may:

- (a) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or
- (b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, subject to section 62AB proceed ex parte to the hearing of the complaint and to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

**62A Procedure where person granted bail fails to appear**

If a defendant who has been apprehended, whether under or without a warrant, and released on bail in accordance with the *Bail Act*, fails to appear in accordance with his bail undertaking, the Court, in addition to issuing a warrant under section 39 of that Act, may:

- (a) adjourn the hearing until the defendant is apprehended; or
- (b) subject to section 62AB, proceed ex parte to the hearing of the complaint and may adjudicate on the complaint as fully and effectually, to all intents and purposes, as if the defendant had appeared in accordance with his bail undertaking.

**62AB Ex parte proceedings**

- (1) Where the Court proceeds ex parte in pursuance of, and in accordance with, section 62(b) or 62A(b) to hear and adjudicate upon a complaint, it may in so doing, in respect of the complaint, regard:
  - (a) an allegation contained in the summons as served upon the defendant to which that complaint relates; or
  - (b) an allegation contained in that complaint where that complaint is a complaint made on oath in accordance with the requirements of section 50(3)(b); or
  - (c) oral evidence,as evidence of the matter alleged.

- (2) For the purposes of subsection (1)(a) and (b), an allegation is contained in a summons or complaint if it is contained in, annexed to, or accompanies the summons or complaint.
- (3) An allegation referred to in subsection (1) may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.
- (4) Where the Court finds a charge proved in ex parte proceedings under section 62(b) or 62A(b), heard and adjudicated upon in accordance with this section, the prosecutor may recite to the Court a relevant matter alleged against the defendant to which those proceedings relate as if that defendant had personally appeared and pleaded guilty.

**63      If the complainant does not appear, Court to dismiss complaint, or at discretion adjourn hearing**

- (1) If the defendant appears in obedience to the summons, or is brought before the Court by virtue of any warrant, then if the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the Court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing.
- (2) In any such case any single Justice shall be competent to dismiss the complaint, or to adjourn the hearing.

**63A      Certain decisions of Court may be set aside on application by defendant or complainant**

- (1AA) This section applies if a Court (the *relevant Court*) has:
  - (a) proceeded ex parte, under section 62(b) or 62A(b), to hear and adjudicate on a complaint and has found the defendant guilty of the offence or made an order against the defendant to which the complaint relates; or
  - (b) proceeded ex parte, under section 191, to hear and adjudicate on an offence specified in a notice to appear and has found the defendant guilty of the offence or made an order against the defendant to which the notice to appear relates; or
  - (c) dismissed a complaint under section 63(1) or the proceedings for the notice to appear under section 190(4) (each of which is a *dismissal*).
- (1) The defendant in relation to a finding of guilt or order may, not later than 1 month after the finding of guilt or order comes to the defendant's notice, give the clerk of the relevant Court, a written

application to the relevant Court to set aside that finding or order.

- (1A) The complainant in relation to a dismissal may, not later than 1 month after the dismissal comes to the complainant's notice, give the clerk of the relevant Court a written application to the relevant Court to set aside the dismissal.
- (1B) An application mentioned in subsection (1) or (1A) must state the grounds of the application.
- (2) If a clerk of a relevant Court is given an application under subsection (1) or (1A), the clerk must:
  - (a) appoint a time and place for the hearing by the relevant Court of the application; and
  - (b) give written notice to the person who made the application of the time and place so appointed.
- (3) Where a defendant who has served an application referred to in subsection (1) is in custody pursuant to the finding of guilt or order to which the application relates, a Justice may, upon application by the defendant, if satisfied that that first-mentioned application has been duly served and that that defendant is not in custody for some other cause, grant the defendant bail in accordance with the *Bail Act*.
- (4) Where a defendant is in custody pursuant to a finding of guilt or order mentioned in subsection (1AA)(a) or (b), the keeper of the gaol where the defendant is being held, or a person authorised in writing by the keeper for that purpose, must, at the request of that defendant, as soon as practicable, make all necessary arrangements:
  - (a) for the purpose of allowing service of an application referred to in subsection (1); and
  - (b) for the purpose of allowing that defendant to make an application referred to in subsection (3).
- (5) A defendant who has served an application referred to in subsection (1) and who is not granted bail pursuant to subsection (3) must, pending the determination under subsection (7) of the application and for so long as the defendant is not in custody for some other cause, be treated in the same manner as a person who is in custody pursuant to section 60(1).
- (6) Where, as a result of a determination under subsection (7), a defendant is required to serve a term of imprisonment, the period, if any, during which the defendant is in custody pending the

determination must count as part of the whole term.

- (7) At the time and place appointed under subsection (2) for the hearing of an application referred to in subsection (1) or (1A), the Court must, unless the applicant to which the application relates was a defendant who was, under subsection (3), granted bail in accordance with the *Bail Act* and who fails to appear in accordance with the defendant's bail undertaking, proceed to hear and determine that application:

- (a) by refusing that application; or
- (b) by adjourning the hearing of that application to a time and place appointed by the Court, and giving to the other party written notice:
  - (i) of that time and place; and
  - (ii) that that other party may, if the other party thinks fit, at that time and place appear to oppose that application,

and the Court must then and there set aside the finding of guilt or order, or dismissal, as the case may be, to which that application relates, on such terms and conditions as the Court thinks fit, or the Court may refuse to set aside that finding of guilt or order, or dismissal.

- (8) The Court may, in making a determination under subsection (7), make such order as to costs as it thinks fit.
- (9) Where an application referred to in subsection (1) relates to a finding of guilt or order against the applicant and the finding of guilt or order imposed a sentence of imprisonment but that applicant was, under subsection (3), granted bail in accordance with the *Bail Act* and the Court, in determining under subsection (7) the application:
- (a) refuses, under subsection (7)(a), that application; or
  - (b) refuses, under subsection (7)(b), to set aside that finding of guilt or order,

it must order the return of the applicant to custody according to the finding of guilt or order to which that application relates.

- (10) In this section:

***complainant***, in circumstances relating to a notice to appear, includes a complainant as defined in section 189.

***defendant***, in circumstances relating to a notice to appear, includes a person who fails to appear as required by the notice to appear.

***notice to appear***, see section 189.

**64 If both parties appear, Court to hear and determine the case**

If both parties appear before the Court, either in person or by their respective counsel or solicitors, then the Court shall proceed to hear and determine the matter of the complaint.

**65 Power of the Court or a Justice to adjourn hearing**

- (1) The hearing of any complaint may be adjourned from time to time, and at any time before it is completed, either:
  - (a) by the Court before which the complaint comes for hearing; or
  - (b) if the Court is then sitting to hear the complaint, then by any Justice.
- (2) Every such adjournment shall be to a time and place appointed and stated by the Court or the Justice in the presence and hearing of the party or parties then present.
- (3) The adjournment shall be allowed upon such (if any) terms as the Court or the Justice thinks fit, and in the meantime the Court or the Justice may remand the defendant into custody, grant him bail in accordance with the *Bail Act*, or dispense with the requirements for bail pursuant to the *Bail Act*.
- (4) The Court or any Justice may, in any case where the defendant has been remanded into custody, order the defendant to be brought before the Court or Justice or any other Justice for the hearing or the continuation of the hearing at any time before the expiration of the period for which the hearing has been adjourned, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey the order.
- (5) If a defendant, who has been released on bail in accordance with the *Bail Act* or in respect of whom the requirement of bail has been dispensed with pursuant to that Act, fails to appear at the time and place appointed under subsection (2):
  - (a) the Court then sitting to hear the adjourned complaint or a Justice may issue a warrant for the apprehension of the defendant and further adjourn the hearing until he is apprehended; or
  - (b) the Court then sitting to hear the adjourned complaint may

proceed ex parte to the hearing of the complaint and may adjudicate on the complaint as fully and effectually, to all intents and purposes, as if the defendant had appeared at that time and place.

- (6) If the defendant is by virtue of a warrant issued under subsection (5) brought before the Court, the Court shall hear the case or continue the hearing as if there had been no adjournment.
- (8) Instead of issuing a warrant as provided in subsection (5), the Court sitting to hear the adjourned complaint or any Justice may issue a summons for the appearance of the defendant at the time and place mentioned in the summons.
- (9) If the defendant appears before the Court, the Court shall hear the case or continue hearing as if there had been no adjournment.
- (11) If a defendant summoned under subsection (8) fails to appear in obedience to the summons, the Court before which he is summoned may proceed in the manner provided by section 62.
- (12) If a defendant appears at the time and place appointed under subsection (2) and the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the Court shall dismiss the complaint, unless for some reason it thinks it proper to further adjourn the hearing.
- (13) The Court of Summary Jurisdiction, or a Justice, on being satisfied that a defendant who has been remanded into custody is by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the Court, may in the absence of the defendant order him to be kept in custody for such further period as the Court or Justice deems reasonable, but not exceeding 15 clear days at any one time, unless both parties consent to a longer period.
- (14) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice.

## **66 Postponement of hearing where no component Court available**

- (1) If no Justice is present at the time and place at which any summons is returnable, or to which the hearing is adjourned or postponed, the clerk shall, at the request of the complainant, postpone the hearing until the next day on which a Justice or Justices (as the case may require) will attend at such place.
- (2) The postponement shall be made by delivering to the complainant and to the defendant, or such of them as are present, a

memorandum in the prescribed form, and every defendant and witness to whom a copy of the memorandum is delivered shall be under the like obligation to attend at the time and place therein mentioned, and shall be subject to the same obligations and liabilities, as if the memorandum were a summons issued by a Justice.

**67 When defendant pleads guilty Court to find guilty or make an order**

- (1) When the defendant is present at the hearing the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be found guilty or why an order should not be made against him (as the case may be).
- (2) If the defendant admits the truth of the complaint, and shows no sufficient cause why he should not be found guilty, or why an order should not be made against him, the Court shall find him guilty or make an order against him accordingly.

**68 If defendant pleads not guilty Court to hear parties and their evidence**

- (1) If the defendant does not admit the truth of the complaint the Court shall proceed to hear:
  - (a) the complainant and his witnesses and any other evidence which he adduces in support of his complaint; and
  - (b) the defendant and his witnesses and any other evidence which he adduces in his defence; and
  - (c) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.
- (2) Subject to any law for the time being in force in the Territory in regard to the evidence of aboriginals and children, every witness shall be examined upon oath.
- (3) The practice before the Court of Summary Jurisdiction upon the hearing of any complaint with respect to the examination, cross-examination and re-examination of witnesses and the right of addressing the Court in reply or otherwise shall be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon trials at the criminal sittings of that Court.

**69 After hearing the parties Court to find guilty or dismiss**

When the parties and their evidence have been heard, the Court



shall consider and determine the whole matter, and shall find the defendant guilty or make an order against the defendant or dismiss the complaint, as the case may require: Provided that the Court may, at any time before the matter has been finally determined, permit the complaint to be withdrawn, upon such terms (if any) as it thinks fit.

## **Division 4      Judgment**

### **70      Finding of guilt to be minuted**

- (1) When the Court finds the defendant guilty or makes an order against the defendant a minute or memorandum of the finding of guilt or order shall then be made.
- (2) No fee shall be paid for any minute or memorandum under this section.

### **70A      Findings of guilt where charges joined in the complaint**

- (1) Where charges for more than one offence have been joined in the same complaint, pursuant to this Act, the Court may:
  - (a) find the defendant guilty of such one or more of those offences as it finds proved; and
  - (b) include any number of offences in a minute or memorandum of a finding of guilt or in any formal finding of guilt.
- (2) This section shall apply notwithstanding anything contained in the Special Act.

### **71      Order and certificate of dismissal**

- (1) If the Court dismisses the complaint a minute or memorandum of that fact shall be made and the Court may, on being required to do so and if it thinks fit, draw up an order of dismissal and give the defendant a certificate thereof.
- (2) A certificate of dismissal shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same party.

**72      Furnishing of copy of complaint and conviction or order to interested party**

Every party interested in any finding of guilt or order shall be entitled to demand and have copies of the complaint and of the finding of guilt order (as the case may be), and the clerk shall furnish the copies upon payment of the fees authorised in that behalf.

**73      For discouraging corrupt practices by common informers**

In order to discourage corrupt practices by common informers the Court may, upon any finding of guilt, and notwithstanding any Special Act to the contrary, adjudge that no part, or such part only of the penalty as it thinks fit, be paid to the informer.

**74      Penalties in discretion of Court**

In any case where the Special Act authorises the imposition of a fine of uncertain amount – that is to say, a fine of not less than, or not exceeding, some certain amount or amounts in that behalf specified – the amount of every such fine, within the limits so prescribed, shall be in the discretion of the Court.

**75      General power of Courts to refrain from or mitigate punishment**

- (1) Upon the hearing of any complaint under this or any other Act, whether past or future, and notwithstanding the provisions of any other enactment to the contrary, the Court of Summary Jurisdiction shall have the powers conferred by this section: Provided that nothing herein contained shall:
  - (a) authorise the Court to reduce below the prescribed minimum the amount of any fine imposed under any Act passed for carrying into effect any treaty, convention, or agreement made with the Imperial Government of Great Britain, or with any British possession or with any foreign State, where such treaty, convention, or agreement stipulates for a fine of such minimum amount; or
  - (b) affect the powers conferred upon the Court by any Act in force in the Territory relating to first offenders.

## **Division 5      Costs**

### **77      Power to award costs to defendant**

- (1) Subject to subsection (2) and section 77A, where the Court finds a defendant not guilty of any offence on a complaint or a complaint is withdrawn, it may order the complainant to pay to the defendant such costs as it thinks fit.
- (2) The Court shall not make an order for costs under subsection (1) if:
  - (a) the defendant's actions or omissions in connection with the alleged offence were, in the opinion of the Court:
    - (i) unreasonable in the circumstances; and
    - (ii) contributed to the institution or continuation of the proceedings; or
  - (b) the defendant's actions or omissions during the course of the proceedings or in the conduct of the defence were, in the opinion of the Court, calculated to unnecessarily prolong the proceedings or cause unnecessary expense; or
  - (c) in the opinion of the Court, there was sufficient evidence to support a finding of guilt but the defendant was entitled to an acquittal because of a minor procedural irregularity.

### **77A      Power to award costs against defendant**

Subject to section 77C, where the Court finds a defendant guilty of an offence, it may order the defendant to pay to the complainant such costs as it thinks fit.

### **77B      Costs of adjournment**

Where a proceeding is adjourned, the Court may, whether or not the defendant is subsequently found guilty of the offence with which he or she is charged, make an order for costs against the party who requested the adjournment.

### **77C      Limitation on amount of costs**

The amount that the Court may order for costs under section 77, 77A or 77B shall not exceed the amount calculated in accordance with the prescribed scale.

## **78 Manner of enforcing payment of costs**

- (1) If the complainant is a law enforcement officer within the meaning of the *Fines and Penalties (Recovery) Act* and the Court orders the defendant to pay costs under section 77A or 77B, the costs may be enforced under that Act unless the Court orders imprisonment in default in accordance with subsection (2).
- (2) The Court may order that if the amount a person is ordered to pay is not paid within 28 days, the person is to be imprisoned until his or her liability to pay the amount ordered is discharged.
- (3) If the Court makes an order under subsection (2) and the person does not pay the amount ordered within 28 days, the Court may issue a warrant of commitment in respect of the person specifying the period of imprisonment calculated on the basis of the amount ordered as follows:
  - (a) the period is to be one day for each amount (or part of that amount) prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* that comprises the amount ordered;
  - (b) the period is not to be less than one day;
  - (c) the period is not to exceed 3 months.
- (4) If the person serves the total period of imprisonment under a warrant under subsection (2), the amount ordered is taken to be satisfied.
- (5) If the person serves part of the period of imprisonment under a warrant under subsection (2), the amount ordered is taken to be partially satisfied by the amount calculated at the rate prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* for each day actually served.
- (6) Unless otherwise ordered by the Court, any period of imprisonment that the person has to serve as a result of an order under subsection (2) is to be served:
  - (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the person for the default of a payment of a fine or sum of money; and
  - (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the person other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

**78A      Civil enforcement of costs**

If the complainant is not a law enforcement officer within the meaning of the *Fines and Penalties (Recovery) Act* and the Court orders the defendant to pay costs under section 77A or 77B, the amount ordered, if not paid within 28 days, is enforceable under Part 7 of that Act.

**79      Enforcing costs payable by complainant**

Payment of any costs ordered to be paid by a complainant to a defendant under section 77 or 77B are, if not paid within 28 days, enforceable under Part 7 of the *Fines and Penalties (Recovery) Act*.

**Part IVA      Personal violence restraining orders**

**Division 1      Preliminary matters**

**80      Definitions**

In this Part:

***defendant***, for a personal violence restraining order, means the person against whom the order:

- (a) is sought; or
- (b) is in force.

***personal violence offence*** means an offence against any of the following provisions of the Criminal Code:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by regulation.

***personal violence restraining order***, see section 82.

***protected person***, for a personal violence restraining order, means the person for whose protection the order:

- (a) is sought; or
- (b) is in force.

**81      Object of and achievement of Part**

- (1) The object of this Part is to ensure the safety and protection of persons who experience personal violence outside a domestic relationship as defined in the *Domestic and Family Violence Act*.
- (2) The object of this Part is to be achieved by providing for:
  - (a) the making of personal violence restraining orders to protect people from certain violence; and
  - (b) the enforcement of the orders.

**Division 2      Applying for and making orders**

**82      Application for order**

Any of the following persons may apply for an order under this Division (a *personal violence restraining order*) for the protection of a person against another person:

- (a) the person whose protection is sought under the order;
- (b) an adult acting for the person whose protection is sought under the order;
- (c) a police officer.

**83      Parties to order**

- (1) Only 1 person may be named as the protected person or defendant in a personal violence restraining order.
- (2) The defendant named in a personal violence restraining order cannot be a child under 15 years old.

**84      How application is made**

An application for a personal violence restraining order must:

- (a) be made in the form approved by the Chief Magistrate; and
- (b) be filed in the Court.

**85      Notice of hearing of application**

As soon as practicable after the application is filed, a clerk must give written notice to the protected person and defendant of the time and place for the hearing of the application.

**86      Referral to mediation**

- (1) Before hearing an application for a personal violence restraining order, the Court must refer the protected person and defendant for mediation under the *Community Justice Centre Act*.
- (2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied it is in the interests of justice to do so, including, for example, because:
  - (a) there is a history of violence committed against the protected person by the defendant; and
  - (b) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.
- (3) A referral stays the proceeding until a report is given to the Court under subsection (6).
- (4) The referral is taken to be an application under section 13 of that Act for the provision of mediation services for a dispute between the protected person and defendant.
- (5) The Director of the Community Justice Centre must accept the application.
- (6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.
- (7) The Court may refer the matter back to the Director with directions about the application.
- (8) In deciding the application, the Court must take a report of the Director into account.

**87      Deciding application**

- (1) The Court may make a personal violence restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the protected person.
- (2) Otherwise, the Court must dismiss the application.
- (3) The Court may decide the application even if the defendant does not appear at the hearing.

## **88      Matters to be considered by Court**

- (1) In deciding whether to make a personal violence restraining order, the Court must consider the safety and protection of the protected person and any affected child to be of paramount importance.
- (2) In addition, the Court must consider the following:
  - (a) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act*,
  - (b) the defendant's previous conduct whether in relation to the protected person, affected child or someone else;
  - (c) other matters the Court considers relevant.
- (3) In this section:

***affected child*** means a child whose wellbeing is affected or likely to be affected by a personal violence offence.

## **89      Content of orders**

- (1) A personal violence restraining order may provide for any of the following:
  - (a) an order imposing the restraints on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;
  - (b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.
- (2) In this section:

***restraint*** includes prohibition.

## **90      Notice of order**

As soon as practicable after a personal violence restraining order is made, the Court must give a copy of it to:

- (a) the protected person and defendant; and
- (b) the Commissioner of Police.



## **Division 3      Miscellaneous matters**

### **91      Variation or revocation of order**

- (1) Any of the following persons may apply to the Court for an order varying (including extending the period the order is in force) or revoking a personal violence restraining order.
  - (a) the protected person;
  - (b) a police officer or adult acting for the protected person;
  - (c) the defendant;
  - (d) a person granted leave by the Court to make the application.
- (2) The defendant may apply for the order only with the leave of the Court.
- (3) The Court may grant leave to the defendant only if satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (4) Division 2 applies (with the necessary changes) to the application as if it were an application under that Division.

### **92      Contravention of order**

- (1) A person commits an offence if:
  - (a) a personal violence restraining order is in force against the person; and
  - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty:      400 penalty units or imprisonment for  
   2 years.

- (2) Subsection (1) does not apply unless:
  - (a) the person has been given a copy of the order; or
  - (b) for an order that has been varied:
    - (i) the person has been given a copy of the order as varied;  
or
    - (ii) the person's conduct also constitutes a contravention of the order last given to the person.

- (3) An offence against subsection (1) is:
- (a) an offence of strict liability; and
  - (b) an offence to which Part IIAA of the Criminal Code applies.

*Note for subsection (3)*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences.*

## **93                      Transitional matter for sureties to keep peace**

- (1) An order in force immediately before the commencement date continues in force until the earlier of the following:
- (a) it is revoked;
  - (b) it would have ended had the repealed provisions not been repealed.
- (2) A complaint made for an order that had not been finally decided before the commencement date may be decided after the commencement date.
- (3) A summons, warrant or other document issued in relation to an order before the commencement date continues in force after the commencement date.
- (4) This section applies despite the repeal of the repealed provisions.
- (5) In this section:

***commencement date*** means the date on which this Part commences.

***order*** means an order under the repealed provisions.

***repealed provisions*** means Part IV, Division 7, as in force immediately before the commencement date.

## **Part V                      Indictable offences**

### **Division 1A            Preliminary matters**

#### **100            Definitions**

In this Part:

***committal date*** means the date fixed for the commencement of a preliminary examination.

***handed-up witness statement*** means a statement of a listed witness, a copy or transcript of which was included in the committal brief in accordance with section 105D(1)(e) or 105E.

***listed exhibit***, means a document or thing on the list included in the committal brief under section 105D(1)(d)(ii) or any updated or supplementary list under section 105E.

***listed witness***, means a person on the list included in the committal brief under section 105D(1)(d)(i) or any updated or supplementary list under section 105E.

***prosecutor*** means the informant or a legal practitioner acting for the informant.

***recorded***, for a statement, means recorded by audio or audio-visual means.

### **Division 1            Procedure to committal**

#### **101            Information on indictable offence**

An information may be laid before a Justice in any case where:

- (a) any person is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever, within the Territory; or
- (b) any person suspected to be guilty of having committed any such offence out of the Territory (of which offence cognisance may be taken by the Courts of the Territory) is or is suspected to be within the Territory.

**101A      Joinder of charges**

- (1) Charges for any offences, whether felonies or misdemeanours, may be joined in the same information if the charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.
- (2) The Justice may, if he thinks just, deal with any charge so joined separately.

**102      If warrant to issue information to be upon oath; otherwise oath not necessary**

- (1) If it is intended to issue a warrant in the first instance, as hereinafter provided, the information shall be in writing, and the matter thereof shall be substantiated by the oath of the informant or a witness.
- (2) In any other case the information may be by parole and without any oath.

**103      Issue of warrant in first instance**

Whenever an information is laid before a Justice against any person, and the matter thereof is substantiated by the oath of the informant or a witness, the Justice may, if the defendant is not then in custody, issue his warrant, in the first instance, for the apprehension of the defendant.

**104      Issue of summons**

Whenever an information is laid before a Justice he may, if the defendant is not then in custody, issue his summons for the appearance of the defendant.

**105      Issue of warrant**

- (1) If after being duly served with a summons the defendant fails to appear in obedience thereto, and if the matter of the information is or has been substantiated by the oath of the informant or a witness, any Justice may issue his warrant to apprehend the defendant.
- (2) Notwithstanding anything herein contained any Justice may issue his warrant, before or after the time appointed in a summons, for the appearance of a defendant against whom an information for an indictable offence has been duly laid and substantiated as provided in this Act.

**105A      Preliminary examination to be conducted**

If an information is laid under section 101 for an indictable offence, a preliminary examination must be conducted by a Justice unless:

- (a) an indictment for the offence signed under section 300 of the Criminal Code has been presented; or
- (b) the offence is dealt with under Division 2.

**105B      Youth and adult charged – joint preliminary examination**

- (1) This section applies if:
  - (a) a youth, as defined in the *Youth Justice Act*, and an adult are charged with offences founded on the same facts; and
  - (b) under the *Youth Justice Act* the charge against the youth is to be dealt with by way of preliminary examination; and
  - (c) under this Act the charge against the adult is to be dealt with by way of preliminary examination.
- (2) If this section applies, the 2 preliminary examinations may be conducted by a Magistrate as a joint preliminary examination.
- (3) When conducting a joint preliminary examination:
  - (a) for the charge against the youth – the Magistrate constitutes the Youth Justice Court and must deal with the matter under the *Youth Justice Act*; and
  - (b) for the charge against the adult – the Magistrate acts in his or her capacity as a Justice and must deal with the matter under this Act.
- (4) A Magistrate conducting a joint preliminary examination may, at any stage, disjoin the examinations and deal with the defendants separately if satisfied it would be in the interests of justice to do so.
- (5) When a joint preliminary examination is conducted, the examination:
  - (a) in so far as it relates to the youth, is a preliminary examination under the *Youth Justice Act*; and
  - (b) in so far as it relates to the adult, is a preliminary examination under this Act.

**105C        Prosecutor to serve committal brief**

- (1) If a preliminary examination must be conducted, the prosecutor must serve on the defendant a committal brief that complies with section 105D.
- (2) Subject to sections 105D(2) and 105E, the committal brief must be served on the defendant at least 28 days before the committal date unless:
  - (a) a Justice fixes a different period for service; or
  - (b) the defendant consents to a shorter period of service.
- (3) A committal brief must be served:
  - (a) if the defendant is not represented by a legal practitioner – on the defendant personally; or
  - (b) if the defendant is represented by a legal practitioner – on the legal practitioner personally or by post.
- (4) The prosecutor must file a copy of the committal brief with the clerk as soon as practicable after it is served under subsection (3).

**105D        Content of committal brief**

- (1) A committal brief must contain all of the following:
  - (a) a copy of the information for the charge to which the preliminary examination relates;
  - (b) a notice stating a preliminary examination is to be conducted and where and when it will take place;
  - (c) a notice, in the form prescribed by the Rules under section 201A, explaining:
    - (i) the purpose and nature of a preliminary examination; and
    - (ii) that the prosecution's evidence will include the written or recorded statements of the listed witnesses and any listed exhibits; and
    - (iii) the defendant's rights and obligations under sections 105G to 105L;

- (d) a list of:
    - (i) the persons whose statements the prosecutor proposes to tender as evidence at the preliminary examination (the *listed witnesses*); and
    - (ii) any other documents or things the prosecutor proposes to tender as evidence at the preliminary examination (the *listed exhibits*);
  - (e) for each listed witness – the documents required by section 105F(1) to (3) (as appropriate);
  - (f) for each listed exhibit – the information required by section 105F(4).
- (2) Despite subsection (1), if it is not reasonably practicable for a document mentioned in subsection (1)(e) or (f) to be included in the committal brief when it is served:
- (a) the document need not be included in the committal brief when it is served; but
  - (b) the prosecutor must serve the document on the defendant as soon as it becomes practicable to do so.
- (3) A document required by subsection (2) to be served on the defendant:
- (a) must be served as provided in section 105C(3) for service of the committal brief; and
  - (b) when served, forms part of the committal brief.

#### **105E      Continuing obligation to update committal brief**

- (1) This section applies if, after the committal brief is served, there is any change as to:
- (a) who the persons are whose statements the prosecutor proposes to tender as evidence at the preliminary examination; or
  - (b) what other documents or things the prosecutor proposes to tender as evidence at the preliminary examination.
- (2) If this section applies, the prosecutor must:
- (a) update the list mentioned in section 105D(1)(d) or prepare a supplementary list; and

- (b) serve on the defendant:
  - (i) the updated or supplementary list; and
  - (ii) the documents mentioned in section 105D(1)(e) or (f) (as appropriate) for any witness or exhibit added to the list.
- (3) A document required by subsection (2) to be served on the defendant:
  - (a) must be served as provided in section 105C(3) for service of the committal brief; and
  - (b) when served, forms part of the committal brief.

#### **105F        Requirements for witness statements and exhibits**

- (1) For each listed witness, the committal brief must contain:
  - (a) if the witness' statement is written – a copy of the statement that complies with subsections (2) and (3); or
  - (b) if the witness' statement is recorded:
    - (i) a transcript of the recording; and
    - (ii) a statutory declaration made by the witness declaring that the recorded statement is true.
- (2) A written witness statement must be in the form of, or accompanied by, a statutory declaration made by the witness declaring:
  - (a) that the witness has read the statement or, if the witness cannot read, that the statement has been read to him or her; and
  - (b) that the statement is true.
- (3) If a listed witness is a child, the witness' statement:
  - (a) need not be, or be accompanied by, a statutory declaration; but
  - (b) must contain, or be accompanied by, a written statement of the witness' age.
- (4) For each listed exhibit, the committal brief must contain:
  - (a) if the exhibit is a document – a copy of the document; or



- (b) if the exhibit is not a document – a description of the exhibit (which may be included in the list under section 105D(1)(d)) or a photograph of the exhibit.
- (5) The prosecutor must give to the defendant and the defendant's legal practitioner reasonable opportunity before the committal date to:
  - (a) listen to, and for an audio-visual recording, view, any recorded statements of listed witnesses; and
  - (b) inspect any listed exhibits.
- (6) In this section:

*statutory declaration* includes an affidavit.

**105G      Defendant may apply for leave to cross-examine witness**

- (1) The defendant may apply to the Justice conducting the preliminary examination for leave to cross-examine a listed witness.
- (2) An application for leave to cross-examine must be made at least 14 days before the committal date.
- (3) The Justice may permit the defendant to make a late application for leave to cross-examine if satisfied that it is in the interests of justice to do so, having regard to the reason why the application was not made in time.

**105H      Leave to cross-examine witness**

- (1) The defendant cannot cross-examine a witness at a preliminary examination unless:
  - (a) the defendant applies under section 105G or 105J(9)(b) for leave to cross-examine; and
  - (b) the Justice grants leave under this section.
- (2) If the prosecutor consents to leave being granted, the Justice must grant leave unless satisfied it would not be in the interests of justice to do so.
- (3) If the prosecutor does not consent to leave being granted, the Justice must not grant leave unless satisfied:
  - (a) the defendant:
    - (i) has identified an issue to which the proposed cross-examination relates; and

- (ii) has provided a reason why the evidence of the witness is relevant to that issue; and
- (b) cross-examination of the witness on that issue is justified having regard to the matters mentioned in subsections (4) and (5).
- (4) In determining whether cross-examination is justified, the Justice must have regard to the need to ensure that:
  - (a) the prosecution case is adequately disclosed; and
  - (b) the issues are adequately defined; and
  - (c) the evidence is sufficient to put the defendant on trial for any indictable offence; and
  - (d) a fair trial will take place if the matter proceeds to trial, including that the defendant will be able adequately to prepare and present a defence; and
  - (e) any matters relevant to a potential plea of guilty are clarified; and
  - (f) any matters relevant to a potential discontinuance of prosecution are clarified; and
  - (g) trivial, vexatious or oppressive cross-examination is not permitted; and
  - (h) any mental, intellectual or physical disability to which the witness is or appears to be subject and of which the Justice is aware is taken into consideration; and
  - (i) the interests of justice are otherwise served.
- (5) If the witness is a child, the Justice must also have regard to:
  - (a) the need to minimise the trauma that might be experienced by the witness in giving evidence; and
  - (b) any relevant condition or characteristic of the witness, including age, culture, personality, education and level of understanding; and
  - (c) the importance of the witness to the case for the prosecution; and
  - (d) the existence or lack of evidence that corroborates the proposed evidence of the witness; and

- (e) the extent of any proposed admissions; and
  - (f) the probative value of the proposed evidence of the witness; and
  - (g) the issues in dispute; and
  - (h) the weight of the proposed evidence of the witness; and
  - (i) any statements of other witnesses that contradict the proposed evidence of the witness.
- (6) If leave to cross-examine a witness is granted, the witness must attend at the time and place fixed for the giving of evidence by the witness.
- (7) If a witness does not attend a preliminary examination when required to do so:
- (a) the Justice may continue the preliminary examination in the absence of the witness; but
  - (b) the witness' handed-up witness statement is then inadmissible as evidence in the preliminary examination.

#### **105J        Prosecution evidence**

- (1) A handed-up witness statement must be admitted at the preliminary examination as the evidence-in-chief of the witness as if the witness had appeared before the Justice and given evidence orally.
- (2) If a handed-up witness statement is admitted under subsection (1), any listed exhibit mentioned in the statement must be admitted as if it had been mentioned by the witness while giving evidence orally.
- (3) Subsections (1) and (2) apply:
- (a) on proof of service of the handed-up witness statement; and
  - (b) subject to subsections (4) and (5) and section 105H(7)(b).
- (4) The Justice may refuse to admit all or any part of a handed-up witness statement or a listed exhibit in accordance with any applicable rules of evidence.
- (5) The Justice may refuse to admit a recorded handed-up witness statement or a listed exhibit if satisfied section 105F(5) has not been complied with.

- (6) The Justice may grant leave to the prosecution for a listed witness to give oral evidence-in-chief supplementary to his or her handed-up witness statement if satisfied it is in the interests of justice to do so.
- (7) The Justice may grant leave to the prosecution for a person who is not a listed witness to give evidence if satisfied it is in the interests of justice to do so.
- (8) A witness for whom leave is granted under subsection (7) is to give the whole of his or her evidence-in-chief orally.
- (9) If leave is granted under subsection (6) or (7):
  - (a) the witness must attend at the time and place fixed for the giving of evidence by the witness; and
  - (b) the defendant may apply for leave to cross-examine the witness.

#### **105K      Cross-examination of witness**

- (1) If leave to cross-examine a listed witness is granted, the evidence-in-chief of the witness at the preliminary examination must be confined to the witness:
  - (a) identifying himself or herself; and
  - (b) attesting to the truthfulness of his or her handed-up witness statement.
- (2) Subsection (1) does not apply to a witness if leave is granted under section 105J(6) or (7) for the witness.
- (3) A defendant who is granted leave to cross-examine a witness is not limited to cross-examining the witness on the issue for which leave was granted.
- (4) However, the Justice may disallow any question asked during the cross-examination if it appears to the Justice that:
  - (a) the defendant has not:
    - (i) identified an issue to which the question relates; and
    - (ii) provided a reason why the evidence of the witness is relevant to that issue; or
  - (b) the question is not justified having regard to the matters mentioned in section 105H(4) and (5).

- (5) A witness cross-examined by the defendant may be re-examined by the prosecutor.
- (6) This section does not limit any other power the Justice may have to disallow a question asked of a witness.

**105L      Protected witness cannot be called or examined**

- (1) Despite any other provisions of this Act, a protected witness:
  - (a) is not required to attend a preliminary examination; and
  - (b) cannot be examined or cross-examined at a preliminary examination.
- (2) In this section:

***protected witness*** means:

- (a) if the charge, or any of the charges, the subject of the preliminary examination is a charge of a sexual offence:
  - (i) a child; or
  - (ii) the alleged victim of the offence; or
- (b) if the charge, or any of the charges, the subject of the preliminary examination is a charge of a serious violence offence – a child.

***sexual offence***, see section 3 of the *Sexual Offences (Evidence and Procedure) Act*.

**106A      Powers of Magistrate to take plea of guilty without evidence**

- (1) Where the defendant appears before a Magistrate and the information charges the defendant with an offence cognisable by a Magistrate under section 120 or 121A, or both, the defendant at any stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the offence or any of the offences charged against him or her, and the Magistrate at the commencement of the proceedings is to inform the defendant of his or her right so to plead.
- (2) If the defendant pleads guilty to such an offence:
  - (a) the Magistrate shall, in relation to that offence, be the Court of Summary Jurisdiction within the meaning of this Act; and

(b) the procedure and powers of the Court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act; and

(c) sections 130A, 131, 132 and 133 shall, so far as they are applicable, apply in respect of the offence,

but the plea of guilty may be withdrawn as provided in subsection (3).

(3) If after the defendant has so pleaded guilty to an offence, the Magistrate, on consideration of any facts stated by the prosecution or given in evidence, is of the opinion that the time for taking the plea should be postponed, the Magistrate may order that the plea of guilty be withdrawn and thereupon all further proceedings in respect of the offence are to be conducted in accordance with this Part; but if any such further proceedings are taken the defendant is not, by reason of his or her plea of guilty, entitled to plead *autrefois* convict.

**107                      Place where examination taken not to be deemed an open court, and no person to remain without consent**

The room or building in which the examination is taken shall not be deemed an open court for that purpose, and the Justice may, if it appears to him that the ends of justice will be best answered by so doing, order that no person shall have access to or be or remain in the room or building without his consent or permission: Provided that nothing herein contained shall authorise the exclusion of any counsel or solicitor for either party.

**108                      Evidence upon oath**

(1) Subject to any law for the time being in force in the Territory in regard to the evidence of children, every witness shall have the usual oath administered to him before he is examined.

**108A                    Contemptuous behaviour on preliminary examination**

Section 46 shall apply in relation to the preliminary examination before a Justice in the same way as it applies to proceedings before the Court of Summary Jurisdiction and shall be read and construed with all such modifications as are necessary to give effect to this section.

**109            Procedure on completion of the evidence for the prosecution**

- (1) When all the evidence offered upon the part of the prosecution has been taken, the Justice then present shall consider whether it is sufficient to put the defendant upon his trial for any indictable offence.
- (2) If the Justice is of the opinion that the evidence is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.
- (3) If the Justice is of opinion that the evidence is so sufficient, the Justice may:
  - (a) if the charge is one of a minor indictable offence, proceed in the manner directed and under the provisions in that behalf contained in Division 2; or
  - (b) unless the defendant is charged with an offence punishable by imprisonment for life, ask the defendant whether he wishes to plead to the charge as provided in Division 3, and proceed as thereby directed; or
  - (c) proceed with the examination as provided in the next succeeding sections.

**110            Defendant may give evidence and call witnesses**

- (1) A Justice proceeding with a preliminary examination under section 109(3)(c) must explain to the defendant, in a way reasonably likely to be understood by the defendant, that:
  - (a) the defendant has the right to answer the charge; and
  - (b) the defendant may give evidence on oath in his or her defence, but is not required to do so; and
  - (c) if the defendant chooses to give evidence:
    - (i) he or she may be questioned by the Justice and cross-examined by the prosecution; and
    - (ii) anything the defendant says will be recorded and may be given in evidence at trial; and
  - (d) the defendant may call other witnesses to give evidence on oath in his or her defence, but is not required to do so.

- (2) A Justice need not give the explanation required by subsection (1) if the defendant is represented by a legal practitioner and the Justice is satisfied the matters mentioned in subsection (1) have been adequately explained to the defendant by the legal practitioner.
- (3) After giving the explanation required by subsection (1), or dispensing with it under subsection (2), the Justice must give the defendant the opportunity to give evidence and call any witnesses.
- (4) If the defendant chooses to give evidence, he or she is to give his or her evidence-in-chief on oath and may be:
  - (a) questioned by the Justice; and
  - (b) cross-examined by the prosecutor and then re-examined.
- (5) If the defendant is committed for trial, any evidence given by the defendant at the preliminary examination may be given in evidence at the trial.
- (6) Any witness called by the defendant is to give his or her evidence-in-chief on oath and may be cross-examined by the prosecution and re-examined.

## **112            Procedure on completion of examination**

- (1) When the examination is completed the Justice then present shall consider whether the evidence is sufficient to put the defendant upon his trial for any indictable offence.
- (2) If, in the opinion of the Justice, it is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.
- (3) If, in the opinion of the Justice, the evidence is sufficient, he shall:
  - (a) direct the defendant to be tried at the first sitting of the Supreme Court exercising its criminal jurisdiction next held after a period of 14 days after a date and at a place specified by the Justice; and
  - (b) by his warrant, commit the defendant to a specified gaol or place to which by law he may be committed, to be kept there until delivered so to appear, or grant him bail in accordance with the *Bail Act*; and
  - (c) cause a record of the direction and the committal or admission to bail to be made in writing.



- (4) Where the defendant is so directed, he shall, subject to any order made by the Supreme Court, be tried accordingly.

**112A      Conduct of preliminary examination generally**

- (1) Except as provided in this or any other Act, a preliminary examination must be conducted in the way determined by the Justice conducting the examination.
- (2) Unless this or any other Act provides otherwise, for controlling and managing the conduct of a preliminary examination, the Justice may do any of the following:
- (a) adjourn the preliminary examination from time to time;
  - (b) order the prosecutor and defendant to attend before the Justice to deal with procedural or case-management issues;
  - (c) order the prosecutor or defendant to do anything the Justice considers will or may facilitate the preliminary examination being conducted fairly, efficiently, economically and expeditiously.
- (3) This section does not limit any other power the Justice may have for dealing with the conduct of a preliminary examination.

**113      Power to remand defendant from time to time**

- (1) If the Justice adjourns the preliminary examination, the Justice may remand the defendant for such time as in his discretion he deems reasonable, but not exceeding 15 clear days at one time unless both parties consent thereto.
- (2) If the remand is for a time not exceeding 3 clear days, the Justice may verbally order the constable or other person in whose custody the defendant then is, or any other constable or person named by the Justice in that behalf, to continue or keep the defendant in custody, and to bring him before the same or any other Justice acting at the time appointed for continuing the examination.
- (3) If the remand is for any time exceeding 3 clear days the defendant shall be remanded by a warrant of the Justice to gaol, or to some other place of security.
- (4) Any Justice on being satisfied that a defendant who has been remanded into custody is, by reason of illness or accident, unable at the expiration of the period for which he was remanded to appear personally before a Justice, may in the absence of the defendant order him to be kept in custody for such further period as the Justice deems reasonable, but not exceeding 15 days at any

one time unless both parties consent to a longer period.

- (5) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice.

**114            Power to admit to bail in lieu of remand**

Instead of detaining the defendant in custody as provided in section 113, any Justice before whom the defendant appears or is brought may grant him bail in accordance with the *Bail Act*.

**115            Power to continue examination before expiry of remand**

The Justice who remanded the defendant or any other Justice may, notwithstanding that the defendant has been remanded, order the defendant to be brought before him or any other Justice, at any time before the expiration of the period for which the defendant has been remanded, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey the order.

**116            Transmission of documents to Supreme Court upon committal for trial**

- (1) Whenever a defendant is committed for trial, the Justice shall forthwith deliver, or cause to be delivered, to the Director of Public Prosecutions a copy of the committal brief, a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of any witnesses who gave oral evidence at the preliminary examination and all recognisances of witnesses, bail undertakings and conditions of bail entered into.
- (2) The Director of Public Prosecutions shall cause these documents to be delivered to the proper officer of the Court in which the trial is to be had, before or at the opening of the Court, on the first day of the sitting thereof, or at such other time as the Judge who is to preside in the Court at the trial order and appoints.
- (3) Whilst the documents are in the custody of the Director of Public Prosecutions, he shall have and be subject to the same duties and liabilities with respect to the several documents upon a certiorari directed to him, or upon a rule or order directed to him in lieu of that writ, as the Justice would have had, and been subject to, if the documents had not been transmitted to the Director of Public Prosecutions.

**117            Binding witnesses by recognisances**

- (1) The Justice conducting a preliminary examination may, by

recognisance, bind any listed witness or other witness examined under section 105J(7) recognisance to appear at the Court at which the defendant is to be tried, then and there to give evidence.

- (2) Every witness called by the defendant (except a witness merely to the character of the defendant) who, in the opinion of the Justice, gives evidence in any way material to the case, or tending to prove the guilt or innocence of the defendant, shall be bound as provided in subsection (1).
- (3) Any recognisance under this section may be entered into at any stage of the examination, although the defendant has not then been committed for trial; but a recognisance so entered into before committal shall be void if the defendant is not committed for trial.

## **118        Form of recognisance of witness**

- (1) The recognisance shall specify:
  - (a) the Christian name and surname of the witness; and
  - (b) the place of his residence, and, if it is in a city or town, the name of the street and the number (if any) of the house, and whether he is the owner or tenant thereof, or a lodger therein; and
  - (c) his occupation.
- (2) The recognisance shall be entered into and duly acknowledged by the witness before, and be subscribed by, the Justice.
- (3) The recognisances in respect of all or any 2 or more witnesses who are bound in the same sum or penalty may be included in one form or document, and in respect of each witness the recognisance shall be as valid and effectual as if it had been entered into by a separate form or document.

## **119        Witness refusing to enter into recognisance may be committed to gaol**

If any witness refuses to enter into or acknowledge the recognisance the Justice may, by his warrant, commit the witness to the gaol nearest to the place in which the defendant is to be tried, there to be imprisoned and safely kept until after the trial of the defendant, unless in the meantime the witness duly enters into and acknowledges the recognisance before some Justice; but if afterwards, from want of sufficient evidence in that behalf, or other cause, the Justice before whom the defendant is brought does not commit him or hold him to bail for the offence with which he is charged, any Justice may order and direct the keeper of the gaol to

discharge any such witness from custody, and he shall be discharged accordingly.

## **Division 2                Minor offences**

### **120                Minor offences**

- (1) Subject to this Act, the Court constituted by a Magistrate has jurisdiction to hear and determine in a summary manner a charge in respect of an offence against section 210, 219, 221, 224, 227 or 229 of the Criminal Code, or an attempt to commit such an offence, where the value of the property involved does not exceed \$5,000.
- (2) The jurisdiction conferred by subsection (1) may be exercised whether or not the defendant consents to its exercise.

### **121A               Offences that may be dealt with summarily**

- (1) Subject to section 122A, where:
  - (a) a person is charged before the Court with an indictable offence; and
  - (b) the offence is either:
    - (i) punishable by not more than 10 years imprisonment; or
    - (ii) against sections 210, 213, 228, 229 and 241 of the Criminal Code and punishable by not more than 14 years imprisonment; and
  - (c) in the opinion of the Court, the charge is not one that the Court has jurisdiction, apart from this section, to hear and determine in a summary manner; and
  - (d) the defendant consents to it being so disposed of; and
  - (e) the prosecutor consents to it being so disposed of; and
  - (f) the Court is of the opinion that the case can properly be disposed of summarily,

the Court has jurisdiction to hear and determine the charge in a summary manner, and pass sentence on the person so charged.

- (1AA) The Court may seek from the prosecutor and the prosecutor must give to the Court, an outline of the evidence that will be presented for the prosecution, for the purpose of enabling the Court to determine whether to hear and determine the charge in a summary manner.
- (1AB) A statement made by the prosecutor under subsection (1AA) is not admissible in evidence in a subsequent proceeding in respect of the charge.
- (1A) Subject to subsection (1B), a person the subject of a charge referred to in subsection (1)(a) being dealt with in the manner referred to in subsection (1) and who, in respect of the charge, is represented by a legal practitioner, may, at any stage of the proceedings relating to the hearing of that charge, plead guilty to that charge.
- (1B) The Court hearing a charge being dealt with in the manner referred to in subsection (1) shall not, in respect of that charge, accept a plea of guilty under and in accordance with subsection (1A) from the person the subject of that charge unless it is of the opinion that it is proper to do so.
- (3) In this section ***Court*** means the Court constituted by a Magistrate.

**122A      Serious or difficult matters not to be dealt with summarily**

- (1) If it appears to the Court that an offence being dealt with pursuant to section 120 or 121A, having regard to its seriousness, the intricacy of the facts or the difficulty of any question of law likely to arise at the trial or any other relevant circumstances, ought to be tried by the Supreme Court:
- (a) the Court may discontinue the summary proceedings; and
  - (b) the Magistrate who constituted the Court may continue the proceedings as a preliminary examination.
- (2) A Magistrate who continues proceedings under subsection (1)(b) may, having regard to the stage reached in the summary proceedings, do any or all of the following:
- (a) dispense with the requirement for a committal brief to be served;
  - (b) grant leave for witnesses to give oral evidence-in-chief or be cross-examined without requiring compliance with sections 105G to 105K;

- (c) otherwise dispense with or modify the requirements of Division 1 to the extent to which the Magistrate considers appropriate to facilitate the proceedings being conducted fairly, efficiently, economically and expeditiously.

**124            Justice or Justices not having jurisdiction may remand for hearing by a competent Court**

If the Justice or Justices before whom any defendant appears, charged with any offence cognisable under sections 120 or 121A, is or are not competent to hear and determine the case in a summary way, and it appears to him or them that the case is or may be one fit to be so heard and determined, he or they may remand the defendant, and adjourn the hearing to such time and place as he deems or they deem fit, then and there to be heard before a Magistrate.

**125            Charge to be reduced into writing and defendant required to plead**

- (1) When a Magistrate proceeds to dispose of any case under section 120 or 121A, the charge shall, in the case of a parol information, be reduced into writing, and the defendant shall be asked whether he is guilty or not guilty of the charge.
- (2) Thereafter the Magistrate shall be the Court of Summary Jurisdiction within the meaning of this Act, and, subject to this Act, the procedure and the powers of the Court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act.

**126            Witnesses for prosecution may be recalled for cross-examination**

When the evidence of any witness has been taken before the Justices constituting the Court, his evidence need not be taken again, but any such witness shall, if the defendant so requires, be recalled for the purposes of cross-examination.

**128            Certificate of dismissal**

If the Court dismisses the charge, an order of dismissal shall be drawn up, and a certificate thereof granted to the defendant in the manner provided by section 71.

**130A        Application of certain provisions of Criminal Code to minor offences**

Sections 322, 323, 324, 326 and 329 of the Criminal Code shall apply on the trial, under this Division of any offence to which they relate in the same manner as far as possible as they apply to the trial of similar offences in the Supreme Court.

**130B        Power of Court to order delivery of property**

(1) Where any property:

- (a) has come into the custody or possession of a member of the Police Force in connection with a charge or prosecution under a law in force in the Territory or otherwise in the course of his duty; or
- (b) has come into the custody or possession of the Court of Summary Jurisdiction, or a clerk of the Court, whether as an exhibit or otherwise in connection with a summary proceeding in the Court,

the Court of Summary Jurisdiction may, on application either by a member of the Police Force of the Northern Territory or a clerk of the Court of Summary Jurisdiction or by a claimant of the property, make an order for the delivery of the property to the person appearing to the Court to be the owner thereof, or, may make such order with respect to the property as to the Court may seem fit.

- (2) No order made under this section shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order where that action is brought within 6 months after the order is made.

**131        Transmission of documents to Supreme Court and evidentiary value**

- (1) When any charge is heard and determined under this Division, the written charge, a copy of the committal brief (if a preliminary examination was conducted), a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses in the relevant proceeding, and the finding of guilt, or the order of dismissal, shall be transmitted to the clerk of the Supreme Court, there to be kept among the records of that Court.

- (2) A copy of the finding of guilt, or of the order of dismissal, certified by the clerk of the Supreme Court, or proved to be a true copy, shall be sufficient evidence to prove a finding of guilt or dismissal for the offence mentioned therein, in any legal proceeding whatever.

**131A      Summary jurisdiction in respect of harm and aggravated assault**

- (1) The Court constituted by a Magistrate has jurisdiction to hear and determine in a summary manner a charge in respect of an offence against section 186, 188(2) or 189A(1) or (2)(a) of the Criminal Code.
- (2) The Court shall not hear and determine in a summary manner a charge referred to in subsection (1) if it is of the opinion that the charge should be prosecuted on indictment.

**132      Effect of finding of guilt**

A finding of guilt under this Division shall have the same effect as a finding of guilt upon an indictment for the same offence would have had.

**133      Proceedings to be a bar to further prosecution**

A defendant who obtains an order of dismissal, or is found guilty, under this Division, shall be released from all further or other criminal proceedings for the same cause.

**Division 3              Committal for sentence**

**134      Defendant may be asked to plead to the charge**

- (1) If section 109(3)(b) permits the Justice to do so, the Justice may ask the defendant whether he wishes to plead to the charge.
- (2) If the defendant thereupon signifies a desire to plead to the charge, the Justice shall reduce the charge into writing and read the same to the defendant, and say to him, "Are you guilty or not guilty of the offence with which you are charged?".

**135      On plea of not guilty examination to proceed**

If the defendant does not signify a wish to plead, or pleads not guilty, the Justice shall proceed to complete the preliminary examination in the manner provided in Division 1.



**136            On plea of guilty defendant to be committed or granted bail before sentence**

- (1) If the defendant pleads guilty, the Justice shall:
  - (a) direct the defendant to appear for sentence at the first sitting of the Supreme Court exercising its criminal jurisdiction next held after a period of 14 days after a date and at a place specified by the Justice; and
  - (b) by his warrant commit the defendant to a specified gaol or place to which by law he may be committed to be kept there until delivered so to appear, or grant him bail in accordance with the *Bail Act*; and
  - (c) cause a record of the plea, the direction and the committal or grant of bail to be made in writing.
- (2) Where the defendant appears for sentence, he shall, subject to sections 141 and 142 and to any order made by the Supreme Court, be sentenced accordingly.

**137            Defendant may call witnesses as to character**

- (1) The defendant, upon pleading guilty, may, if he so desires, call any witnesses as to his character.
- (2) If any such witnesses are called, their depositions shall be recorded.
- (3) Nothing contained in this section shall be deemed to take away, or in any way limit, the power of the Judge before whom the defendant appears for sentence to hear witnesses as to his character, or to hear any statement by him or on his behalf.

**138            Attendance of witnesses at the Criminal Court**

- (1) The Justice may bind the prosecutor or any witness by recognisance to appear at the Court before which the defendant is to appear for sentence, in the same manner as if he had been committed for trial: Provided that, unless the Justice when binding the prosecutor or any witness otherwise directs, every such recognisance shall be void unless the defendant, within the time and in the manner prescribed by section 141, withdraws his plea of guilty and substitutes therefor a plea of not guilty.
- (2) Section 119 applies to any witness who refuses to enter into any such recognisance.

**139      Transmission of documents to Supreme Court**

When the defendant is committed, or granted bail, the Justice shall forthwith deliver the record, or cause it to be delivered, with the a copy of the committal brief, a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of any witnesses who gave oral evidence at the preliminary examination, and the recognisances recognisance (if any), to the Director of Public Prosecutions, who shall cause it to be delivered to the proper officer of the Court at which the defendant is to appear for sentence, before or at the opening of that Court on the first sitting next held after a period of 14 days after a date specified for the purposes of section 112(3)(a) or 136(1)(a), or at such other time as the Judge who is to preside in the Court may order.

**141      Withdrawal of plea and substitution of plea of not guilty**

- (1) When a defendant has been committed or granted bail to appear for sentence, he may, nevertheless, by notice in writing to the Director of Public Prosecutions, not less than 7 clear days before the day of the first sitting of the Court at which he is to appear, withdraw his plea of guilty and substitute therefor a plea of not guilty: Provided that in such case any Judge presiding over the Court may adjourn or postpone the trial to such day as he thinks proper.
- (2) Thereupon the defendant:
  - (a) if committed to appear for sentence, shall be deemed to have been committed for trial and the warrant of committal shall be construed accordingly; or
  - (b) if granted bail to appear for sentence, shall be deemed to have been granted bail to appear for trial, and any bail undertaking or condition by whomsoever entered into in connection with the grant of bail, shall be construed accordingly.
- (3) Upon receipt of a notice under this section it shall be the duty of the Director of Public Prosecutions to cause the notice to be delivered to the proper officer mentioned in section 139.
- (4) At the trial of any person who has, under this section, substituted a plea of not guilty, the fact that he had pleaded guilty to the charge on which he is being tried shall not be put in evidence, nor be made the subject of any comment by the prosecution.

**142                      Court to sentence accordingly unless the Judge advises withdrawal of the plea**

Subject to section 141, upon the appearance for sentence of a defendant committed or granted bail to appear for sentence, the Court may pass sentence or otherwise deal with the defendant as if he had been arraigned and had pleaded guilty in the Court, and all the same consequences shall ensue as if he had been so arraigned and had so pleaded guilty: Provided that if, for any reason, it appears to the presiding Judge of the Court that the plea of guilty should be withdrawn, he may advise the person to withdraw that plea, and, if the plea be thereupon withdrawn, the defendant shall be deemed to have been committed for trial, and may forthwith, or after adjournment, and notwithstanding that no information has been filed in the Court, be arraigned, and the case shall proceed in the usual course.

**Division 5                      Miscellaneous**

**151                      Conveying prisoners to gaol**

Any constable or other person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of the gaol, who shall thereupon give the constable or other person so delivering the prisoner into his custody a receipt for the prisoner, setting forth the state and condition in which the prisoner was when he was so delivered.

**152                      Evidence at trial if witness dead or ill**

- (1) This section applies if a defendant is committed for trial and a witness whose evidence was admitted at the preliminary examination is unable to give evidence at the trial because the witness is dead or so ill as not to be able to travel.
- (2) If this section applies the following are admissible as evidence at the trial without further proof:
  - (a) the handed-up witness statement of the witness (to the extent to which it was admitted); and
  - (b) if the witness gave oral evidence at the preliminary examination, the deposition of the witness.

**153            Justice may take deposition of person dangerously ill and unable to attend preliminary examination**

- (1) Whenever it is made to appear to the satisfaction of any Justice that:
- (a) an oral witness is dangerously ill and is, in the opinion of a medical practitioner, not likely to recover from the illness; and
  - (c) it is not practicable for any Justice to take the deposition of the witness at the preliminary examination of the defendant;

the Justice may take the statement upon oath of the witness.

- (2) The Justice taking the deposition shall thereupon subscribe the deposition, and shall add thereto, by way of caption, a statement of his reason for taking it, and of the day and place when and where it was taken, and of the names of the persons (if any) present at the taking thereof.
- (3) If the deposition relates to any indictable offence for which any defendant is already committed or bailed to appear for trial the Justice shall transmit the deposition, with the addition mentioned in subsection (2), to the officer to whom the depositions are by law required to be transmitted, and that officer shall preserve it.
- (4) In this section:

***oral witness*** means a person:

- (a) for whom leave to cross-examine has been granted under section 105H; or
- (b) for whom leave to give oral evidence has been granted under section 105J(6) or (7); or
- (c) whom the defendant desires to call as a witness under section 110.

**154            Use of such deposition at trial**

Afterwards, upon the trial of any defendant or defendants to whom the statement relates, the statement may be read in evidence, either for or against the defendant, if:

- (a) the statement purports to be signed by the Justice by or before whom it purports to be taken; and

- (b) it is proved that the person who made the statement is dead, or that there is no reasonable probability that the person will ever be able to travel or give evidence; and
- (c) it is proved, to the satisfaction of the Court, that reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that that person, or his counsel or solicitor, had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the statement.

**155                      Provision for prison being present at the taking of deposition**

Whenever any prisoner in actual custody causes to be served, or receives notice of, an intention to take a statement under section 153, the Judge or Justice before whom the prisoner was committed, or a visiting Justice of the gaol in which he is confined, may, by an order in writing, direct the keeper of the gaol having the custody of the prisoner to convey him to the place mentioned in the notice for the purpose of being present at the taking of the statement, and the keeper shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the gaol from which the prisoner is conveyed.

**156                      Manner of payment to prosecutor or witness**

Every order for payment to any prosecutor or other person under section 391 of the *Criminal Law Consolidation Act* shall be forthwith made out and delivered by the proper officer of the Court to the prosecutor or other person, and shall be paid by the Sheriff out of any funds he may have in his hands, or which may be granted to him for the purpose, to the person named therein; or if the order is endorsed with the words "Pay the bearer hereof," or words to that effect, signed by the person therein named, and witnessed by one disinterested person, then to the bearer thereof; and the Sheriff shall be allowed the sum paid in his accounts; and every payment made by him shall effectually discharge him from any claims made by the person named in the order for payment, or any person claiming by, through, or under him.

**157                      Court may allow expenses to witnesses for the defence**

Any Judge of the Court before which any defendant is prosecuted or tried, or for trial before which he is committed or bailed to appear, for any felony, misdemeanour, or other indictable offence, is hereby authorised and empowered in his discretion, at the request of any person who appears before the Court to give

evidence on behalf of the defendant, to certify that the witness so appearing ought to be paid his expenses, and in that case the amount to be paid to the witness shall be the same as if he had been a witness for the prosecution, and shall be ascertained in like manner, and shall be defrayed out of any moneys provided by the Legislative Assembly for allowances to witnesses.

**158            Power to award payment of expenses of prosecution of a minor offence**

When any charge is summarily adjudicated upon under Division 2, the Justices or Magistrate, upon the request of any person who has preferred the charge, or appeared to prosecute or to give evidence against the person charged, may, if they or he thinks fit, grant a certificate to that person for the amount of the compensation for his reasonable expense, trouble, and loss of time therein, subject to the regulations for the time being in force in relation to the certificates to be granted by the examining Magistrates under the *Criminal Law Consolidation Act*. Provided that the amounts of fees payable in respect of the expenses of apprehending the defendant and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation, and paid in the like manner.

**159            Power to award costs of prosecution although charge dismissed**

Where any defendant is charged before a Justice with felony, or with any indictable misdemeanour, and in the opinion of the Justice the charge was bona fide made up on reasonable and probable cause, the Justice may, in his discretion, at the request of the prosecutor, grant a certificate of the expenses and of the amount to be allowed for the trouble and loss of time to the witnesses appearing and examined on the charge, notwithstanding that the parties may not be bound over by recognisance to prosecute and give evidence and although no committal for trial may take place: Provided that any certificate so granted shall be subject to the regulations for the time being in force with regard to certificates granted by examining Magistrates under the *Criminal Law Consolidation Act*, and shall be payable in manner directed by section 160.

**160            Manner of payment under sections 158 and 159**

Every certificate for compensation under section 158 or 159 shall be paid by the clerk, upon the certificate being presented to him, upon sight, out of any funds in his hands, or which may be granted to him for the purpose, to the person named therein; or if the

certificate is endorsed with the words, "Pay the bearer hereof," or words to that effect, signed by the person named therein and witnessed by one disinterested person, then to the bearer thereof, and the clerk shall be allowed the sum paid in his accounts, and every payment made by him shall effectually discharge him from any claims made by the person named in the certificate, or any person claiming by, through or under him:

Provided that no payment shall be made on any certificate for compensation under section 158 or 159 unless the certificate is presented for payment within 6 months from the date when it was signed by the Justice or Magistrate who granted it.

## **Part VI                      Appeals from Court of Summary Jurisdiction**

### **Division 1                Special case**

#### **162              Points of law may be reserved for the consideration of the Supreme Court**

- (1) The Court may, at discretion, reserve any question of law arising on or out of the hearing or determination of any information or complaint for the consideration of the Supreme Court, and state a special case or cases for the opinion of the Court.
- (1A) Any such question may be so reserved at any time during the hearing of the information or complaint, or at any time within one month after the Court of Summary Jurisdiction has finally determined the information or complaint.
- (2) The Supreme Court shall deal with every such special case according to the practice of the Supreme Court on special cases, and may make such order thereon (including any order as to the costs of the proceedings in that Court and in the Courts below) as to the Supreme Court appears just.
- (3) The Supreme Court may send any such special case back for amendment, or may itself amend it.
- (4) The Justices shall make a conviction or order in respect of the matters referred to the Supreme Court in conformity with the certificate of the Supreme Court.

## **Division 2      Appeals generally**

### **163      Right of appeal to Supreme Court**

- (1) A party to proceedings before the Court may appeal to the Supreme Court from a conviction, order, or adjudication of the Court (including a conviction of a minor indictable offence but not including an order dismissing a complaint of an offence), on a ground which involves:

- (a) sentence; or
- (b) an error or mistake, on the part of the Justices whose decision is appealed against, on a matter or question of fact alone, or a matter or question of law alone, or a matter or question of both fact and law,

as hereinafter provided, in every case, unless some Special Act expressly declares that such a conviction, order, or adjudication shall be final or otherwise expressly prohibits an appeal against it.

- (2) Any provision of any Special Act conferring a right of appeal to a Local Court against any conviction, order, or adjudication mentioned in subsection (1) or (3) shall be read as conferring a right of appeal to the Supreme Court under this Act in lieu of to a Local Court.
- (3) A party to proceedings before the Court arising from a complaint or an information in relation to a minor indictable offence that the Court summarily disposes of may appeal to the Supreme Court from an order or adjudication of the Court dismissing the complaint or information.
- (4) Subsection (3) does not apply if a Special Act expressly declares that the order or adjudication is to be final or otherwise expressly prohibits an appeal against it.
- (5) An appeal under subsection (3) may be on a ground that involves an error or mistake on the part of the Justices whose decision is appealed against on a matter or question of law alone or a matter or question of both fact and law.
- (6) Section 176A does not apply to an appeal under subsection (3).



**164 No appeal on removal into Supreme Court to be allowed except under this Act**

No appeal shall be allowed from any conviction, order, determination, or adjudication of the kind mentioned in section 163(1) or (3), nor shall any such conviction, order, determination, or adjudication be removed into the Supreme Court, except as provided by this Act.

**165 Power of Supreme Court to dispense with conditions precedent to appeal where compliance impracticable**

The Supreme Court may dispense with compliance with any condition precedent to the right of appeal, as prescribed by this Act, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with this Act.

**166 Amendment of notice of appeal**

No appeal shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of the grounds of appeal, but if upon the hearing thereof the Supreme Court is of opinion that any objection raised to the notice or statement is valid, it may cause the notice or statement to be forthwith amended:

Provided that if the notice or statement appears to have been misleading, or to have occasioned expense, or to have prejudiced the respondent, the amendment shall be allowed only upon such terms as to costs or postponement, or both, as the Supreme Court thinks just.

**167 Recognisances on appeal**

- (1) Every recognisance on appeal shall be entered into before the Justices whose decision is appealed against, or some other Justice, and shall be conditioned duly to prosecute the appeal, and to abide the order of the Supreme Court thereon, and to pay such costs as may be awarded by that Court.
- (2) Subject to this section, the Justice or Justices taking the recognisance may in their discretion require one or more sureties to be bound by the recognisance for the due performance of the conditions thereof, in such sum or sums as the Justice or Justices think fit.
- (3) Where notice of appeal has been given and the respondent is a member of the Police Force of the Northern Territory, a Justice shall not take a recognisance on appeal unless he is satisfied that the appellant has given to the officer-in-charge of the police station

nearest the Justice notice in writing of his intention to enter into a recognisance on appeal before the Justice on a date and at a time specified in the notice.

- (4) A member of the Police Force of the Northern Territory may appear before a Justice proposing to take a recognisance and be heard on the question of the amount of the bond, the necessity for sureties and the amount in which the sureties (if any) shall be bound.
- (5) In relation to an order dismissing a complaint, not being a complaint of any offence, the Court making the order may order that if the decision is appealed against no recognisance shall be entered into.
- (6) Where the Court so orders no recognisance on appeal shall be entered into.
- (7) When any fine or sum of money is adjudged to be paid by a conviction or order, a person appealing against the conviction or order may, at his option:
  - (a) enter into a recognisance on appeal; or
  - (b) pay into Court:
    - (i) the amount of the fine or sum of money adjudged to be paid; and
    - (ii) the amount of \$20, to abide the order of the Supreme Court on the appeal.
- (8) Unless a recognisance on appeal is entered into before a Stipendiary Magistrate or a Special Magistrate, any surety bound by the recognisance shall make an affidavit as to his means of paying the sum in which he is bound.

## **168 Release of appellant in custody**

- (1) Where the appellant is in custody or the subject of a non-custodial order in pursuance of the conviction or order appealed against, a Special Magistrate or a Justice may, subject to this section, if satisfied that his appeal has been duly instituted, release him on bail in accordance with the *Bail Act*, subject to an undertaking that he appear before the Justice or Justices whose decision is appealed against, or if that is impracticable, before some other Justice or Justices, within 14 days of the day on which the Supreme Court announces its decision on the appeal, to abide the result of the decision, unless the conviction or order is reversed.
- (2) The appellant shall give the respondent reasonable notice of his intention to apply for release.

- (3) The respondent may object to the application for release.
- (4) An appellant who has instituted his appeal and is not released pursuant to this section shall, pending the determination of his appeal and for so long as he is not in custody for some other cause, be treated in the same manner as a person who is committed for trial and is in custody awaiting trial.
- (5) If as a result of his appeal the appellant is required to serve a term of imprisonment, subject to the direction of the Supreme Court, the time during which the appellant is in custody and is specially treated shall count as part of the whole of that term.

**169 Amendment of recognisances on appeal**

- (1) If any recognisance entered into as a condition of any appeal appears to the Supreme Court to have been insufficiently entered into, or to be otherwise defective or invalid, that Court may:
  - (a) permit the substitution of a new and sufficient recognisance to be entered into before it, in the place of the insufficient, defective, or invalid recognisance; or
  - (b) dispense with the recognisance,

and in either case upon such terms as to adjournment and costs as it thinks just.

- (2) Every such substituted recognisance shall be as valid and effectual and may be enforced as if it had been duly entered into in the first instance.

**170 After decision on appeal Justices may enforce same**

- (1) When any finding of guilt or order has been affirmed, amended, or made upon any appeal, the Justices from whose decision the appeal has been brought, or any other Justice, shall have the same authority to enforce the finding of guilt or order as if it had not been appealed against, or had been made in the first instance.
- (1A) If a person found guilty and committed to gaol appeals and is released on bail under the *Bail Act* pending the outcome of his appeal, and the Court on appeal orders that the balance or some part of the balance of his sentence be served, the Justices from whose decision the appeal has been brought or any other Justice may by warrant remand the appellant to his former custody, there to serve the balance of the term to be served by him.

- (2) No action or proceeding whatsoever shall be commenced or had against any Justice for enforcing the finding of guilt or order by reason of any defect in the finding of guilt or order.

#### **171 Appeal to be instituted within one month**

- (1) The appeal shall be instituted by notice in accordance with section 172, by entering into such recognisance on appeal as is required under sections 167 and 168 and by payment of the fee specified in section 172.
- (2) Every appeal shall be instituted within one month from the time of the conviction, order, or adjudication appealed against: Provided that where the Judge of the Supreme Court is of opinion that, by reason of the remoteness from the seat of the Court of Appeal of the place at which the conviction, order, determination, or adjudication was effected or made, an extension of the time within which notice of appeal from the conviction, order, determination, or adjudication may be given is reasonable, he may extend that time for such further period, not exceeding 3 months, as he thinks fit.

#### **172 Notice of appeals**

- (1) The notice of appeal shall be in writing, and shall be served upon the respondent, and shall state:
  - (a) that the appellant appeals to the Supreme Court at the sittings of the Supreme Court for hearing appeals under this Act commencing at Darwin or Alice Springs, as the case requires, on a day specified in the notice in accordance with subsection (2); and
  - (b) the nature and grounds of the appeal.
- (2) The day specified in the notice shall be a day on which sittings of the Supreme Court for hearing appeals under this Act will, in accordance with the rules of the Supreme Court, if practicable, commence at Darwin or Alice Springs, whichever is nearer to the place at which the decision appealed against was made and shall be the first such day after the expiration of 21 days from the service of the notice.
- (3) Two copies of the notice of appeal shall be served upon the clerk of the Justices whose decision is appealed against, and shall be accompanied by the prescribed fee or, where there is no prescribed fee, a fee of \$3.

### **173      Hearing of appeals**

An appeal shall unless it has been summarily dismissed be heard at the sittings of the Supreme Court for hearing appeals under this Act commencing at Darwin or Alice Springs, as the case requires, on the day specified in the notice of appeal in accordance with section 172(1), or if sittings are not commenced there on that day, the first sittings commencing there after that day; but this section shall not affect the power of the Supreme Court to adjourn the hearing to any time or place it thinks fit.

### **174      Convictions etc. to be transmitted to Supreme Court**

- (1) When notice of appeal is served pursuant to section 172 and the fee mentioned in that section is paid the Justices by whom the conviction, order, or adjudication is made shall cause the conviction, order, or adjudication to be forthwith transmitted to the clerk or other proper officer of the Supreme Court, there to be kept among the records of that Court.
- (2) In any subsequent proceeding relative thereto the conviction, order, or adjudication, or a copy thereof certified by the proper officer of the Supreme Court under his hand, shall be sufficient evidence thereof.

### **175      Transmission of documents to Supreme Court on appeal**

The Justices shall also cause a copy of the notice of appeal, together with the fee paid pursuant to section 172, a copy of the committal brief (if a preliminary examination was conducted), and a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses or all exhibits tendered in the relevant proceeding to be transmitted with the conviction, order, or adjudication.

### **175A      Transmission of documents to Supreme Court deemed to be a tendering in evidence that Court**

Where, under section 174(1) or 175, a document or exhibit referred to in either of those sections is transmitted to the Supreme Court, the transmission of the document or exhibit shall be deemed to be a tendering in evidence to that Court of that document or exhibit.

### **176      Evidence on appeal**

Subject to section 176A, no evidence shall be received on the hearing of the appeal other than such documents or exhibits as are mentioned in sections 174 and 175 and a record, made by means of sound-recording apparatus or shorthand, of the depositions of a

witness in the relevant proceeding produced out of the custody of the clerk for the relevant district, except by consent of the parties.

#### **176A Tendering of evidence to Supreme Court**

- (1) Where evidence is tendered to the Supreme Court, that Court shall, unless it is satisfied that the evidence, if received, would not afford a ground for allowing the appeal, admit that evidence if:
  - (a) it appears to it that that evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
  - (b) it is satisfied that that evidence was not adduced in those proceedings and there is a reasonable explanation for the failure to adduce it; and
  - (c) it is satisfied that the appellant has complied with the requirements of subsections (2) and (3) in respect of that evidence.
- (2) An appellant shall not, under subsection (1), tender evidence to the Supreme Court unless he has, not less than 7 days before the hearing of the appeal to which the evidence relates is commenced by that Court, given, subject to subsection (3), written notice to the other party to the proceedings of the evidence to be so tendered including, where such evidence is to be given by a person, irrespective of whether it is to be given orally or by affidavit, the name, address and occupation of the person.
- (3) For the purposes of subsection (2), an appellant shall give a notice referred to in that subsection by delivering or leaving it at, or by sending it by registered post service to, the last known residential or business address of:
  - (a) the other party to the proceedings; or
  - (b) the solicitor, if any, of the other party to the proceedings.

#### **177 Procedure and power of Supreme Court on appeal**

- (1) Every appeal shall be heard and determined by the Supreme Court in a summary way, and according to the rules of practice in force with reference to the proceedings of the Court in that behalf, and the Supreme Court shall have all the powers and duties, as to amendment and otherwise, of the Justices whose decision is appealed from.

- (2) Upon the hearing of the appeal the Supreme Court may do any or all of the following:
  - (a) adjourn the hearing from time to time;
  - (b) mitigate or increase any penalty, forfeiture, or sum;
  - (c) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance;
  - (d) remit the case for hearing or for further hearing before the Court of Summary Jurisdiction;
  - (e) make such further or other order as to costs or otherwise as it thinks fit;
  - (f) notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.
- (3) The Supreme Court may upon such terms as it thinks fit at any time before the order of dismissal is drawn up and sealed reinstate any appeal dismissed for want of prosecution.
- (4) In exercising its discretion on an appeal made under section 163(1) for an increase of sentence imposed after the commencement of this subsection (whether or not the sentence involved imprisonment or another penalty, forfeiture or sum), the Supreme Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to do either or both of the following:
  - (a) allow the appeal;
  - (b) impose another sentence.

**178 If costs not paid according to order of Supreme Court, certificate to be granted**

- (1) When the Supreme Court makes any order as to the costs of the appeal it shall direct the costs to be paid to the Master or other proper officer of the Supreme Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid.

- (2) If the costs are not paid within the time so limited (or if no time is so limited, then within 7 days) the Master or other proper officer of the Supreme Court, upon application of the party entitled to the costs of any person on his behalf, and on payment of the fee of 10 cents, shall grant to the party so applying a certificate that the costs have not been paid.

**179            Enforcement of payment of costs of appeal**

- (1) Upon production of the certificate mentioned in section 178 to any Justice the payment of the costs may be enforced in the same manner as is provided by this Act for enforcing the payment of costs awarded by Justices, or by putting the recognisances (if any) in suit, or in both of those modes.
- (2) The payment of the costs may be enforced under the same warrant as any penalty or sum adjudged to be paid by any conviction or order affirmed or made upon the appeal.

**Part VII            Supplementary provisions**

**Division 1            Irregularities and amendment**

**181            Form of information or complaint**

It shall be sufficient in any information or complaint, if the information or complaint gives the defendant a reasonably clear and intelligible statement of the offence or matter with which he is charged.

**182            Information or complaint not to be objected to for irregularity**

No objection shall be taken or allowed to any information or complaint in respect of:

- (a) any alleged defect therein, in substance or in form; or
- (b) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the Court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it:

- (a) that the defendant has been prejudiced by the defect or variance; or



- (b) that the information or complaint fails to disclose any offence or matter of complaint.

**183 Amendment of information or complaint**

If it appears to the Court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint:

- (a) fails to disclose any offence or matter of complaint, or is otherwise defective; and
- (b) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure the defect,

the Court may amend the information or complaint upon such terms as may be just.

**183A Complaint and information may be joined in certain circumstances**

Notwithstanding any other provision of this Act, where the Court has jurisdiction to deal with both:

- (a) a charge specified in a complaint; and
- (b) a charge specified in an information,

relating to the same defendant and arising from the same or associated circumstances, the Court may deal with both the complaint and information together.

**184 Warrant or summons not to be objected to for irregularity**

No objection shall be taken or allowed to any warrant or summons in respect of:

- (a) any alleged defect therein, in substance or in form; or
- (b) any variance between it and the evidence adduced in support of the information or complaint at the preliminary examination or at the hearing (as the case may be):

Provided that the Court may adjourn the hearing, if it appears to him or to it that the defendant has been prejudiced by the defect or variance.

**185 Amendment of findings of guilt, warrants etc.**

(1) Any:

- (a) finding of guilt or order made by a Court of Summary Jurisdiction; or
- (b) warrant of committal, or other warrant or proceeding issued or had by or before any Justice,

may be amended, according to the evidence, by the Justices or Justice by or before whom the finding of guilt, order, or warrant was made, issued, or had, or by any court before which it comes, on appeal or otherwise, at any time after it has been signed, and before it has been executed, upon such (if any) terms as to costs, or otherwise, as to the Justices or Justice or the court seem fit.

- (2) Without limiting the generality of subsection (1), a Court of Summary Jurisdiction may at any time correct a clerical mistake in any of the terms of a judgment, finding of guilt or order, or an error arising in any such terms from an accidental slip or omission.

**186 Findings of guilt etc. not voidable for want of form**

- (1) No finding of guilt or order of the Court, or other proceeding before Justices, shall be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any deficiency in the statement of the offence therein described, if the offence is stated in the words of the Special Act, or if it appears that the offence was one against the true intent and meaning of the Special Act.
- (2) No judgment, finding of guilt, or order of the Court, or other proceeding before Justices, shall be quashed or set aside for any mere matter of form or technical error, or mistake in any name, date, or title, or in any matter of description only; but in all cases regard shall be had alone to the substantial merits and justice of the case.

**187 Parties not to be discharged upon defects in warrants provided finding of guilt took place upon good grounds**

No warrant of commitment issued upon any finding of guilt of the Court shall be held void or invalid, or be quashed, for any defect in substance or in form, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided:

- (a) it is alleged in the warrant that the party has been found guilty of an offence; and

- (b) it appears to the Court or Judge before whom the warrant is returned that the finding of guilt proceeded on good and valid grounds.

**187A      Proof of findings of guilt by minute on complaint**

- (1) Any finding of guilt or order whatsoever made by the Court may be proved by a copy of the information or complaint on which the finding of guilt or order was made, and of the minute or memorandum thereof made by the Court and endorsed on the complaint. One copy shall be certified by the person or one of the persons constituting the Court by which the finding of guilt or order was made or by the clerk of the relevant district or by the deputy of the clerk.
- (2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as is referred to in subsection (1).
- (3) This section shall apply to any finding of guilt whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving findings of guilt or orders.

**Division 2      Habeas corpus**

**188      After summary finding of guilt or order habeas not to issue except on an affidavit writ to be returnable at least 4 days after issue, and notice to be given thereof**

- (1) No writ of habeas corpus shall issue to bring up the body of any person who has been found guilty by the Court, or adjudged by any such Court to pay any sum or perform any duty, unless the person or his solicitor or agent states in an affidavit the ground of objection to the finding of guilt or proceedings.
- (2) Upon the return to the writ, no objection shall be taken or considered unless it has been so stated.
- (3) There shall be an interval of at least 4 clear days between the day upon which any such writ issues and the day upon which it is returnable, and no such writ shall issue without notice to the committing Justice, or to the Director of Public Prosecutions, and to the opposite party or his solicitor.
- (4) Such notice shall be in writing, and shall be given to them or left at their respective dwelling-places or offices at least 4 clear days before the return of the writ.

- (5) No return to any such writ shall be considered by any court or Judge unless it is proved by affidavit that notice has been given as required by this section.
- (6) Any writ issuing without such notice, or not being in conformity to the directions contained in this section, shall be void to all intents and purposes whatsoever.

### **Division 3            Procedures in relation to person served with notice to appear**

#### **189            Definitions**

In this Division:

***complainant*** includes an informant and a counsel or solicitor representing a complainant.

***complaint*** includes an information.

***defendant*** means a person who appears before the Court as required by a notice to appear.

***notice to appear*** means a notice issued under section 133B of the *Police Administration Act*.

#### **190            Procedure on appearance of defendant**

- (1) At the hearing in respect of an offence specified in a notice to appear, the complainant must give the defendant and the Court a complaint containing a statement of the specific offence with which the defendant is charged and the particulars that are necessary to give the defendant reasonable information about the nature of the charge.
- (2) The Court may adjourn a hearing so that a defendant given a complaint under subsection (1) may consider it and make a full answer to the charge.
- (3) If a defendant is not given a complaint in accordance with subsection (1), the Court may adjourn the hearing or dismiss the proceeding.
- (4) If a defendant appears and the complainant fails to appear, the Court must dismiss the proceeding unless it thinks it proper to adjourn the hearing.
- (5) The dismissal of a proceeding under this section does not prevent the commencement of another proceeding in respect of the offence specified in the notice to appear.

## 191 Procedure if failure to appear

- (1) This section applies if a person fails to appear as required by a notice to appear and the Court is satisfied:
  - (a) the substance of the offence specified in the notice to appear (the ***specified offence***) is substantiated on oath made before the Court; and
  - (b) the notice to appear was served in accordance with section 133B(2) of the *Police Administration Act*.
- (2) The Court may do either of the following:
  - (a) adjourn the hearing of the specified offence and issue a warrant for the apprehension of the person;
  - (b) proceed *ex parte* to a hearing of the specified offence (the ***ex parte proceedings***) and, subject to this section, adjudicate in relation to that offence as fully and effectually, to all intents and purposes, as if the person had personally appeared as required by the notice to appear.

*Note for subsection (2)*

*See section 63A for the process for setting aside a decision under this section.*

- (3) For the *ex parte* proceedings, the Court may have regard to either or both of the following as evidence of the commission by the person of the specified offence:
  - (a) the statement in the notice to appear about the substance of the specified offence;
  - (b) any oral evidence.
- (4) If the result of the *ex parte* proceedings is that the Court finds the person committed the specified offence, the prosecutor may recite to the Court a relevant matter alleged against the person about the specified offence as if the person had personally appeared and pleaded guilty.
- (5) A copy of a notice to appear, which the member who served the notice:
  - (a) endorsed on the day of service with the date, time and place it was served; and
  - (b) signed on the day of service; and
  - (c) has certified as a true copy of the original,

is evidence that the notice was served in accordance with section 133B(2) of the *Police Administration Act*.

## **192      Procedure on failure to appear after ineffective service**

- (1) If a person fails to appear as required by a notice to appear and the Court is not satisfied that the person was served with the notice in accordance with section 133B(2) of the *Police Administration Act*, the Court may dismiss the proceeding.
- (2) The dismissal of a proceeding under subsection (1) does not prevent the commencement of another proceeding in respect of the offence specified in the notice to appear.

## **Division 4A      Rules and practice directions**

### **201A      Rules and procedures**

- (1) For the purpose of the Court exercising the jurisdiction conferred on the Court by this or any other Act, the Chief Magistrate, within the meaning of the *Magistrates Act*, may make rules and give practice directions doing any or all of the following:
  - (a) regulating the practice and procedures of the Court;
  - (b) regulating the enforcement of an order of the Court;
  - (c) regulating and prescribing all matters and things incidental or relating to court practice or procedure or enforcement,as the Chief Magistrate considers necessary or convenient for the conduct of the business of the Court.
- (2) Without limiting the generality of subsection (1), the Rules may do any or all of the following:
  - (a) prescribe fees, costs and charges in respect of a proceeding in the Court;
  - (b) enable the hearing of a proceeding to be conducted by telephone or closed circuit television;
  - (c) provide for officers of the Court and their functions and may confer a discretionary authority on an officer or class of officers;
  - (d) provide for the exemption of a person or proceeding, or a class of persons or proceedings, from the application of the Rules or a particular rule;

- (e) provide for matters to facilitate the conducting of joint preliminary examinations under section 105B of this Act and section 56B of the *Youth Justice Act*.
- (3) The Rules may impose or confer on a clerk the functions and powers in relation to the Court and proceedings before the Court and a clerk is to perform those functions and may exercise those powers accordingly.
- (4) Subject to this Act and the Regulations, the practice and procedures of the Court in relation to a proceeding within its jurisdiction are in the discretion of the Court.
- (5) In this section:

**Court** includes a Justice exercising a function under Part V in relation to a preliminary examination.

## **Division 4      Charges and regulations**

### **202      Penalty for extortion**

No clerk shall take, accept, or receive from any person any fee, gratuity, or reward not allowed by law, or greater in amount than is so allowed.

Maximum penalty:      \$50.

### **203      Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular prescribing any or all of the following:

- (a) the places at which the Court shall or may sit, and the constitution and holding of the Court thereat;
- (b) the practice and procedure before Justices and the Court;
- (c) the fees to be paid for a matter or thing required or permitted to be done under this Act and the circumstances in which such fees may be waived by the clerk;
- (d) the forms to be used under this Act, including the form of any recognisance mentioned in this Act;

- (e) the duties of clerks and the form of any record or account required to be kept by them, and providing for the discontinuance of any existing record or account rendered unnecessary by those regulations.

**Part VIII      Transitional matters for Justice Legislation  
Amendment (Committals Reform) Act 2010**

**204      Application of amendments**

A preliminary examination in relation to a charge the information for which was laid before the commencement of the *Justice Legislation Amendment (Committals Reform) Act 2010* is to be conducted in accordance with this Act as if that Act had not commenced.



**Part IX                      Transitional matters for the Criminal Code  
Amendment (Criminal Damage) Act 2011**

**205                      Transitional matters for *Criminal Code Amendment (Criminal  
Damage) Act 2011***

The amendment made to section 121A by the *Criminal Code Amendment (Criminal Damage) Act 2011* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in section 121A(1)(b)(ii) as in force immediately before the commencement of the amendment; and
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

## Schedule 3

sections 22, 57 and 57A

### NORTHERN TERRITORY OF AUSTRALIA

### JUSTICES ACT

### SUMMONS TO A PERSON ON COMPLAINT

To \_\_\_\_\_ of \_\_\_\_\_

Whereas you have this day been charged by \_\_\_\_\_

of \_\_\_\_\_ before the undersigned, a Justice of the Peace for the Northern Territory of Australia, for that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, in the Northern Territory of Australia you did \_\_\_\_\_.

These are therefore to command you to be and appear on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_

in the said Territory before me or such other Justice or Justices of the Peace for the said Territory as may then be there, to answer the said charge, and to be further dealt with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ in the said Territory.

Justice of the Peace

You must either appear in Court on the date shown to plead guilty or not guilty or, if you prefer that the Court should take your plea of guilty without your going to Court, you must sign the "Endorsement" hereunder and deliver it to the Court where this summons requires you to appear or to the nearest police station in the Northern Territory.

#### Endorsement

I have read the terms of the charge against me herein specified and I acknowledge my commission of the offence charged and plead guilty thereto.

I offer the following explanation for the acts alleged in the summons to be an offence:

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AFFIDAVIT OF SERVICE

I \_\_\_\_\_ of \_\_\_\_\_  
make oath and say that I did on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, between the  
hours of \_\_\_\_\_ and \_\_\_\_\_ in the \_\_\_\_\_ noon, at \_\_\_\_\_

in the Northern Territory duly serve the within-named defendant with this  
summons by delivering 2 copies of the summons to him personally [or by  
leaving 2 copies of the summons with him at his last-known place of abode  
(or of business) with some other person apparently an inmate of that place (or  
employed in that place) and apparently not less than 16 years of age].

Made at *[place]* \_\_\_\_\_ on *[date]* \_\_\_\_\_

By *[signature]* \_\_\_\_\_

Witnessed by \_\_\_\_\_

Signature \_\_\_\_\_

Justice of the peace / commissioner for oaths

Name \_\_\_\_\_

Address or phone no. \_\_\_\_\_

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## ENDNOTES

### 1

### KEY

Key to abbreviations

|                             |                              |
|-----------------------------|------------------------------|
| amd = amended               | od = order                   |
| app = appendix              | om = omitted                 |
| bl = by-law                 | pt = Part                    |
| ch = Chapter                | r = regulation/rule          |
| cl = clause                 | rem = remainder              |
| div = Division              | renum = renumbered           |
| exp = expires/expired       | rep = repealed               |
| f = forms                   | s = section                  |
| <i>Gaz</i> = <i>Gazette</i> | sch = Schedule               |
| hdg = heading               | sdiv = Subdivision           |
| ins = inserted              | SL = Subordinate Legislation |
| lt = long title             | sub = substituted            |
| nc = not commenced          |                              |

### 2

### LIST OF LEGISLATION

***Justices Ordinance 1928 (Act No. 26, 1928)***

|             |  |
|-------------|--|
| Assent date | 30 November 1928   |
| Commenced   | 1 August 1929 ( <i>North Australian Gaz</i> 26 April 1929) |

***Justices Ordinance 1929 (Act No. 17, 1929)***

|             |                |
|-------------|----------------|
| Assent date | 29 August 1929 |
| Commenced   | 1 August 1929  |

***Justices Ordinance 1931 (Act No. 2, 1931)***

|             |                  |
|-------------|------------------|
| Assent date | 26 February 1931 |
| Commenced   | 26 February 1931 |

***Justices Ordinance 1933 (Act No. 12, 1933)***

|             |                  |
|-------------|------------------|
| Assent date | 7 September 1933 |
| Commenced   | 7 September 1933 |

***Justices Ordinance 1939 (Act No. 6, 1939)***

|             |             |
|-------------|-------------|
| Assent date | 18 May 1939 |
| Commenced   | 18 May 1939 |

***Justices Ordinance 1952 (Act No. 31, 1952)***

|             |  |
|-------------|--|
| Assent date | 5 September 1952   |
| Commenced   | 23 February 1953 ( <i>North Australian Gaz</i> No. 7,<br>18 February 1953) |

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***Justices Ordinance 1957 (Act No. 16, 1957)***

Assent date 12 April 1957  
Commenced 12 April 1957

**Amending Legislation**

***Justices Ordinance 1961 (Act No. 31, 1961)***

Assent date 13 September 1961  
Commenced 13 September 1961

***Justices Ordinance 1961 (Act No. 31, 1961)***

Assent date 13 September 1961  
Commenced 13 September 1961

***Justices Ordinance 1964 (Act No. 69, 1964)***

Assent date 18 December 1964  
Commenced 18 December 1964

***Justices Ordinance 1965 (Act No. 60, 1965)***

Assent date 17 December 1965  
Commenced 14 February 1966 (s 2)

***Justices Ordinance (No. 2) 1970 (Act No. 67, 1970)***

Assent date 10 December 1970  
Commenced 10 December 1970

***Justices Ordinance 1970 (Act No. 76, 1970)***

Assent date 18 December 1970  
Commenced 18 December 1970 (s 2, s 2 *Records of Depositions Ordinance 1970 (Act No. 44, 1970) and Gaz No. 50A, 18 December 1970, p 365)*

***Justices Ordinance 1973 (Act No. 19, 1973)***

Assent date 8 May 1973  
Commenced 14 June 1973 (*Gaz No. 24, 14 June 1973, p 199*)

***Justices Ordinance (No. 2) 1973 (Act No. 50, 1973)***

Assent date 18 July 1973  
Commenced 25 October 1973 (*Gaz No. 42, 18 October 1973, p 377*)

***Justices Ordinance (No. 3) 1973 (Act No. 86, 1973)***

Assent date 11 December 1973  
Commenced 16 May 1974 (*Gaz No. 20, 16 May 1974*)

***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date 11 December 1973  
Commenced 11 December 1973 (s 12(2))

**Amending Legislation**

***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date 26 August 1974  
Commenced 11 December 1973 (s 3(2))

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***Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)***

Assent date 24 October 1974  
Commenced 11 December 1973 (s 3)

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date 28 June 1976  
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));  
ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Justices Ordinance 1974 (Act No. 54, 1974)***

Assent date 30 September 1974  
Commenced 28 October 1974 (*Gaz* No. 42, 17 October 1974, p 475)

***Justices Ordinance (No. 2) 1974 (Act No. 63, 1974)***

Assent date 21 October 1974  
Commenced 21 October 1974

***Justices Ordinance (No. 2) 1975 (Act No. 19, 1975)***

Assent date 30 July 1975  
Commenced 30 July 1975

***Justices Ordinance 1975 (Act No. 20, 1976)***

Assent date 27 May 1976  
Commenced 27 May 1976

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date 28 June 1976  
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));  
ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Justices Ordinance 1976 (Act No. 5, 1977)***

Assent date 10 February 1977  
Commenced 4 April 1977 (s 2, s 2 *Magistrates Ordinance 1976* (Act No. 4, 1977) and *Gaz* No. 13A, 4 April 1977, p 492)

***Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)***

Assent date 9 December 1977  
Commenced 1 January 1978 (s 2)

***Justices Ordinance 1978 (Act No. 45, 1978)***

Assent date 29 June 1978  
Commenced 1 July 1978 (s 3)

***Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date 1 July 1978  
Commenced 1 July 1978 (s 2)

***Law Officers Ordinance 1978 (Act No. 61, 1978)***

Assent date 1 July 1978  
Commenced 1 July 1978

***Justices Act (No. 2) 1978 (Act No. 6, 1979)***

Assent date 17 January 1979  
Commenced 17 January 1979

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***Justices Act 1979* (Act No. 149, 1979)**

Assent date 12 December 1979  
Commenced 12 December 1979

***Statute Law Revision Act (No. 3) 1979* (Act No. 37, 1980)**

Assent date 24 April 1980  
Commenced 24 April 1980

***Limitation Act 1981* (Act No. 87, 1981)**

Assent date 21 September 1981  
Commenced 26 February 1982 (*Gaz* G8, 26 February 1982, p 2)

***Justices Amendment Act 1981* (Act No. 109, 1981)**

Assent date 21 December 1981  
Commenced 21 December 1981

**Amending Legislation**

***Justices Amendment Act 1983* (Act No. 2, 1983)**

Assent date 27 April 1983  
Commenced 10 June 1983 (*Gaz* G23, 10 June 1983, p 8)

***Statute Law Revision Act 1982* (Act No. 21, 1982)**

Assent date 27 April 1982  
Commenced 27 April 1982

***Justices Amendment Act 1982* (Act No. 62, 1982)**

Assent date 8 October 1982  
Commenced 29 June 1983 (s 2, s 2 *Bail Act 1982* (Act No. 57, 1982) and *Gaz* S19, 29 June 1983)

***Justices Amendment Act 1983* (Act No. 2, 1983)**

Assent date 27 April 1983  
Commenced 10 June 1983 (*Gaz* G23, 10 June 1983, p 8)

***Justices (Criminal Code) Amendment Act 1983* (Act No. 66, 1983)**

Assent date 28 November 1983  
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5)

***Justices Amendment Act 1984* (Act No. 2, 1984)**

Assent date 3 April 1984  
Commenced 3 April 1984

***Justices Amendment Act (No. 2) 1984* (Act No. 10, 1984)**

Assent date 29 June 1984  
Commenced 29 June 1984 (s 2 and s 2 *Criminal code amendment Act 1984* (Act No. 9, 1984))

***Justices Amendment Act 1985* (Act No. 10, 1985)**

Assent date 1 April 1985  
Commenced 1 May 1985 (*Gaz* G17, 1 May 1985, p 7)

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***Law Officers Amendment Act (No. 2) 1986* (Act No. 48, 1986)**

Assent date 10 December 1986  
Commenced 19 December 1986 (*Gaz* S87, 17 December 1986)

***Justices Amendment Act 1988* (Act No. 33, 1988)**

Assent date 14 September 1988  
Commenced 14 September 1988

***Justices Amendment Act (No. 3) 1988* (Act No. 55, 1988)**

Assent date 17 November 1988  
Commenced 1 August 1990 (*Gaz* S47, August 1990)

***Justices Amendment Act 1989* (Act No. 7, 1989)**

Assent date 28 March 1989  
Commenced 30 October 1989 (*Gaz* S61, 27 October 1989)

**Amending Legislation**

***Justices (Subsequential Amendments) Act 1989* (Act No. 54, 1989)**

Assent date 20 September 1989  
Commenced 20 September 1989

***Justices Amendment Act (No. 2) 1989* (Act No. 53, 1989)**

Assent date 20 September 1989  
Commenced 20 September 1989

***Director of Public Prosecutions (Consequential Amendments) Act 1990* (Act No. 29, 1990)**

Assent date 11 June 1990  
Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and *Gaz* G2, 16 January 1991, p 9)

***Local Court (Consequential Amendments) Act 1990* (Act No. 31, 1990)**

Assent date 11 June 1990  
Commenced s 5: 11 June 1990; rem: 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1990) and *Gaz* G49, 12 December 1990, p 2)

***Justices Amendment Act 1991* (Act No. 40, 1991)**

Assent date 26 September 1991  
Commenced s 7: 1 January 1992; rem: 1 November 1991 (s 2(2), s 2 *Justices of the Peace Act 1991* (Act No. 42, 1991), *Gaz* G50, 18 December 1991, p 3 and *Gaz* S58, 1 November 1991, )

***Justices Amendment Act (No. 2) 1991* (Act No. 41, 1991)**

Assent date 26 September 1991  
Commenced 1 January 1992 (*Gaz* S65, 20 December 1991)

***Statute Law Revision Act 1992* (Act No. 46, 1992)**

Assent date 7 September 1992  
Commenced 7 September 1992



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***Justices Amendment Act 1992 (Act No. 68, 1992)***

Assent date 14 December 1992  
Commenced 1 January 1994 (s 2, s 2 *Domestic Violence Act 1992* (Act No. 67, 1992) and *Gaz* G51, 22 December 1993, p 3)

***Justices Amendment Act 1993 (Act No. 17, 1993)***

Assent date 16 June 1993  
Commenced 1 August 1993 (*Gaz* G29, 21 July 1993, p 3)

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date 31 December 1993  
Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz* S35, 20 May 1994)

***Justices Amendment Act 1994 (Act No. 14, 1994)***

Assent date 6 April 1994  
Commenced 1 December 1994 (s 2)

**Amending Legislation**

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
Commenced 20 September 1994 (s 10(2))

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date 23 June 1995  
Commenced 23 June 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Justices Amendment Act 1996 (Act No. 35, 1996)***

Assent date 5 September 1996  
Commenced 1 November 1996 (*Gaz* G41, 9 October 1996, p 4)

***Justices Amendment Act 1997 (Act No. 5, 1997)***

Assent date 26 March 1997  
Commenced 4 May 1997 (*Gaz* G17, 30 April 1997, p 2)

***Statute Law Revision Act 1997 (Act No. 17, 1997)***

Assent date 11 April 1997  
Commenced s 16: 10 December 1997; rem: 1 May 1997 (*Gaz* G17, 30 April 1997, p 2)

***Justices Amendment Act 1998 (Act No. 6, 1998)***

Assent date 25 March 1998  
Commenced 22 April 1998 (*Gaz* G15, 22 April 1998, p 3)

***Justices Amendment Act (No. 2) 1998 (Act No. 57, 1998)***

Assent date 1 September 1998  
Commenced 23 September 1998 (*Gaz* G37, 23 September 1998, p 5)

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***Justices Amendment Act 1999 (Act No. 7, 1999)***

Assent date 9 March 1999  
Commenced 9 March 1999

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date 18 June 1999  
Commenced 18 June 1999

***Justices Amendment Act 2000 (Act No. 7, 2000)***

Assent date 21 March 2000  
Commenced s 3: 1 August 1990; s 5(1): 4 February 1998; s 5(2):  
26 August 1998; rem: 21 March 2000 (s 2)

***Statute Law Revision Act 2000 (Act No. 19, 2000)***

Assent date 6 June 2000  
Commenced s 6: 4 December 1999; rem: 12 July 2000 (s 2 and *Gaz* G27,  
12 July 2000, p 2)

***Justices Amendment Act 2001 (Act No. 40, 2001)***

Assent date 19 July 2001  
Commenced 26 September 2001 (s 2)

***Justices Amendment Act (No. 2) 2001 (Act No. 51, 2001)***

Assent date 19 October 2001  
Commenced 22 October 2001 (s 2, s 2 *Police Administration Amendment  
Act 2001* (Act No. 50, 2001) and *Gaz* S44, 22 October 2001)

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date 11 December 2001  
Commenced 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act  
2001* (Act No. 59, 2001) and *Gaz* G50, 19 December 2001,  
p 3)

***Evidence Reform (Children and Sexual Offences) Act 2004 (Act No. 56, 2004)***

Assent date 4 November 2004  
Commenced 8 December 2004 (*Gaz* G49, 8 December 2004, p 3)

***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date 22 September 2005  
Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32,  
2005) and *Gaz* G30, 26 July 2006, p 3)

***Evidence and Other Legislation (Witness Assistance) Amendment Act 2006 (Act No. 32, 2006)***

Assent date 3 November 2006  
Commenced 3 November 2006

***Justice Legislation Amendment Act (No. 2) 2006 (Act No. 35, 2006)***

Assent date 3 November 2006  
Commenced 3 November 2006

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***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date 17 May 2007  
Commenced s 10: 1 July 2007; rem: 17 May 2007 (*Gaz* G26, 27 June 2007, p 3)

***Evidence of Children Act 2007 (Act No. 16, 2007)***

Assent date 18 September 2007  
Commenced 10 October 2007 (*Gaz* G41, 10 October 2007, p 4)

***Domestic and Family Violence Act 2007 (Act No. 34, 2007)***

Assent date 12 December 2007  
Commenced 1 July 2008 (*Gaz* G25, 25 June 2008, p 4)

***Cross-border Justice Act 2009 (Act No. 1, 2009)***

Assent date 12 March 2009  
Commenced ss 67(b), 68(2)(e), 106, 108, 114, 116 and pt 15 div 6: 1 December 2009; rem: 1 November 2009 (*Gaz* S59, 29 October 2009)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

***Justice Legislation Amendment (Committals Reform) Act 2010 (Act No. 31, 2010)***

Assent date 9 September 2010  
Commenced 1 April 2011 (*Gaz* G13, 30 March 2011, p 11)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

***Criminal Code Amendment (Criminal Damage) Act 2011 (Act No. 5, 2011)***

Assent date 16 March 2011  
Commenced 1 June 2011 (*Gaz* S19, 4 May 2011)

***Criminal Code Amendment (Sentencing Appeals) Act 2011 (Act No. 10, 2011)***

Assent date 18 April 2011  
Commenced 27 April 2011 (*Gaz* G17, 27 April 2011, pp 8 – 9)

***Justice and Other Legislation Amendment Act 2012 (Act No. 2, 2012)***

Assent date 21 March 2012  
Commenced pts 2, 3 and 5 to 7: 1 August 2012; rem: 1 September 2012 (*Gaz* G29, 18 July 2012, p 7)

### 3

### SAVINGS AND TRANSITIONAL PROVISIONS

s 17(2) *Justices Ordinance 1961* (Act No. 31, 1961)  
ss 6(3) and 10(3) *Justices Ordinance 1973* (Act No. 19, 1973)  
s 19 *Justices Ordinance 1974* (Act No. 54, 1974)  
s 4 *Justices Act (No. 2) 1978* (Act No. 6, 1979)  
s 4 *Justices Amendment Act 1981* (Act No. 109, 1981)  
s 5 *Justices Amendment Act 1983* (Act No. 2, 1983)  
s 9 *Justices Amendment Act 1985* (Act No. 10, 1985)  
s 4 *Justices Amendment Act 1993* (Act No. 17, 1993)

## 4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to the following provisions: ss 4, 5, 8 – 11, 13, 17, 21, 25, 26, 26A, 27, 28, 31, 39, 40, 41, 43 – 46, 48, 52, 56, 57, 57A – 57E, 60, 62, 62A, 65, 75, 78, 79, 81, 83, 85, 87, 89, 91, 99, 100, 106A, 108A, 109, 113, 114, 117, 118, 120, 121, 123, 123A, 124, 128, 129, 130A, 130B, 131B – 131E, 135, 138, 141 – 144, 147, 153, 155, 156, 158 – 161, 162A, 163, 164, 167, 168, 171 – 175, 178 – 180, 182, 187A, 188, 194 – 197, 200, 202 and 203.

## 5 LIST OF AMENDMENTS

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| s 4        | amd No. 12, 1933, s 2; No. 16, 1957, s 2; No. 67, 1970, s 2; No. 19, 1973, s 4; No. 54, 1974, s 18; No. 27, 1976, s 6; No. 61, 1978, s 4; No. 21, 1982, s 2; No. 62, 1982, s 5; No. 10, 1985, s 4; No. 31, 1990, s 7; No. 40, 1991, s 7; No. 17, 1996, s 6; No. 16, 2007, s 4; No. 34, 2007, s 142; No. 31, 2010, ss 4 and 23 |
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| s 114               | amd No. 62, 1982, s 11  |
| s 115               | amd No. 31, 1961, s 16  |
| s 116               | amd No. 76, 1970, s 6; No. 54, 1974, s 18; No. 61, 1978, s 4; No. 62, 1982, s 12; No. 48, 1986, s 9; No. 29, 1990, s 7; No. 31, 2010, s 12  |
| s 117               | amd No. 2, 1931, s 2; No. 12, 1933, s 23; No. 63, 1974, s 6; No. 31, 2010, s 13   |
| ss 118 – 119        | amd No. 31, 2010, s 23  |
| s 120               | amd No. 12, 1933, s 24; No. 31, 1961, s 17; No. 60, 1965, s 10; No. 87, 1973, s 12; No. 54, 1974, s 18; No. 149, 1979, s 4; No. 21, 1982, s 2<br>sub No. 66, 1983, s 4<br>amd No. 40, 1991, s 7; No. 5, 1997, s 4 |
| s 121               | rep No. 66, 1983, s 4   |

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| s 121A            | ins No. 20, 1976, s 3<br>amd No. 21, 1982, s 2; No. 2, 1983, s 15; No. 53, 1989, s 2; No. 40, 1991, s 7; No. 17, 1996, s 6; No. 5, 1997, s 5; No. 31, 2010, s 23; No. 5, 2011, s 7           |
| ss 121B –<br>121C | ins No. 20, 1976, s 3<br>rep No. 5, 1997, s 6  |
| s 122             | sub No. 12, 1933, s 25; No. 20, 1976, s 3<br>rep No. 5, 1997, s 6  |
| s 122A            | ins No. 20, 1976, s 3<br>amd No. 40, 1991, s 7<br>sub No. 5, 1997, s 6<br>amd No. 31, 2010, s 14   |
| s 123             | sub No. 12, 1933, s 25<br>amd No. 31, 1961, s 18; No. 63, 1974, s 7; No. 40, 1991, s 7<br>rep No. 5, 1997, s 6   |
| s 123A            | ins No. 31, 1961, s 19<br>rep No. 33, 2005, s 3  |
| s 124             | amd No. 12, 1933, s 26; No. 20, 1976, s 4; No. 40, 1991, s 7; No. 31, 2010, s 23   |
| s 125             | amd No. 54, 1974, s 18; No. 20, 1976, s 5; No. 21, 1982, s 2; No. 5, 1997, s 7   |
| s 126             | amd No. 63, 1974, s 8; No. 5, 1997, s 8  |
| s 127             | rep No. 20, 1976, s 6  |
| s 129             | sub No. 12, 1933, s 27<br>amd No. 31, 1961, s 20; No. 60, 1965, s 11; No. 54, 1974, s 18; No. 20, 1976, s 7; No. 21, 1982, s 2; No. 40, 1991, s 7; No. 17, 1996, s 6<br>rep No. 5, 1997, s 9 |
| s 130             | amd No. 12, 1933, s 28; No. 46, 1992, s 3<br>rep No. 17, 1996, s 6   |
| s 130A            | ins No. 12, 1933, s 29<br>amd No. 21, 1982, s 2; No. 66, 1983, s 5; No. 7, 1999, s 2   |
| s 130B            | ins No. 16, 1957, s 3<br>amd No. 54, 1974, s 18; No. 19, 1975, s 3; No. 21, 1982, s 2; No. 66, 1983, s 6; No. 31, 2010, s 23   |
| s 131             | amd No. 76, 1970, s 7; No. 54, 1974, s 18; No. 21, 1982, s 2; No. 17, 1996, s 6; No. 31, 2010, s 15  |
| s 131A            | ins No. 31, 1961, s 21<br>amd No. 87, 1973, s 12<br>sub No. 21, 1982, s 2; No. 66, 1983, s 7<br>amd No. 10, 1984, s 3; No. 14, 1994, s 3   |
| s 131B            | ins No. 31, 1961, s 21<br>amd No. 60, 1965, s 12; No. 54, 1974, s 18; No. 20, 1976, s 8; No. 21, 1982, s 2<br>rep No. 66, 1983, s 7  |
| s 131C            | ins No. 31, 1961, s 21<br>amd No. 60, 1965, s 13; No. 54, 1974, s 18; No. 20, 1976, s 9; No. 21, 1982, s 2<br>rep No. 66, 1983, s 7  |
| s 131D            | ins No. 31, 1961, s 21<br>amd No. 87, 1973, s 12<br>rep No. 66, 1983, s 7  |
| s 131E            | ins No. 31, 1961, s 21<br>rep No. 66, 1983, s 7  |
| ss 132 –<br>133   | amd No. 21, 1982, s 2; No. 17, 1996, s 6   |
| s 134             | amd No. 87, 1973, s 12; No. 54, 1974, s 7; No. 31, 2010, s 16  |
| s 136             | sub No. 54, 1974, s 8<br>amd No. 62, 1982, s 13; No. 31, 2010, s 23  |
| s 137             | amd No. 76, 1970, s 8  |
| s 138             | amd No. 21, 1982, s 2; No. 31, 2010, s 23  |

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| s 139        | amd No. 76, 1970, s 9; No. 54, 1974, ss 9 and 18; No. 61, 1978, s 4; No. 62, 1982, s 14; No. 48, 1986, s 9; No. 29, 1990, s 7; No. 31, 2010, s 17 |
| s 140        | rep No. 54, 1974, s 10  |
| s 141        | amd No. 61, 1978, s 4; No. 21, 1982, s 2; No. 62, 1982, s 15; No. 48, 1986, s 9; No. 29, 1990, s 7  |
| s 142        | amd No. 21, 1982, s 2; No. 62, 1982, s 16   |
| pt V         |   |
| div 4 hdg    | rep No. 62, 1982, s 4   |
| s 143        | amd No. 54, 1974, s 11<br>rep No. 62, 1982, s 4   |
| s 144        | amd No. 54, 1974, s 12<br>rep No. 62, 1982, s 4   |
| s 145        | amd No. 54, 1974, s 13<br>rep No. 62, 1982, s 4   |
| s 146        | amd No. 21, 1982, s 2<br>rep No. 62, 1982, s 4  |
| ss 147 – 148 | rep No. 62, 1982, s 4   |
| s 149        | amd No. 61, 1978, s 4<br>rep No. 62, 1982, s 4  |
| s 150        | rep No. 62, 1982, s 4   |
| s 151        | amd No. 31, 2010, s 23  |
| s 152        | amd No. 76, 1970, s 10<br>sub No. 31, 2010, s 18  |
| s 153        | amd No. 21, 1982, s 2; No. 31, 2010, s 19   |
| s 154        | amd No. 31, 2010, s 23  |
| s 156        | amd No. 21, 1982, s 2   |
| s 157        | amd No. 21, 1982, s 2; No. 31, 2010, s 23   |
| s 158        | amd No. 21, 1982, s 2; No. 40, 1991, s 7  |
| s 159        | amd No. 21, 1982, s 2; No. 31, 2010, s 23   |
| s 160        | amd No. 12, 1933, s 30; No. 87, 1973, s 12; No. 31, 1990, s 7   |
| s 161        | amd No. 31, 1961, s 22; No. 40, 1991, s 7<br>rep No. 33, 2005, s 3  |
| pt VI hdg    | amd No. 31, 2010, s 23  |
| s 162        | amd No. 12, 1933, s 31; No. 54, 1974, s 18  |
| s 162A       | ins No. 31, 1961, s 23<br>amd No. 87, 1973, s 12; No. 61, 1978, s 4; No. 48, 1986, s 9; No. 29, 1990, s 7<br>rep No. 40, 2001, s 4                |
| s 163        | amd No. 12, 1933, s 32; No. 31, 1961, s 24; No. 54, 1974, s 18; No. 20, 1976, s 10; No. 21, 1982, s 2; No. 2, 1983, s 16; No. 40, 2001, s 5       |
| s 164        | amd No. 21, 1982, s 2; No. 2, 1983, s 17; No. 40, 2001, s 6   |
| s 165        | amd No. 21, 1982, s 2   |
| s 167        | amd No. 12, 1933, s 33; No. 16, 1957, s 4; No. 31, 1961, s 25; No. 60, 1965, s 14; No. 21, 1982, s 2; No. 31, 2010, s 23                          |
| s 168        | amd No. 12, 1933, s 34<br>sub No. 31, 1961, s 26<br>amd No. 62, 1982, s 17; No. 6, 1998, s 3  |
| s 169        | amd No. 31, 2010, s 23  |
| s 170        | amd No. 12, 1933, s 35; No. 62, 1982, s 18; No. 17, 1996, s 6   |
| s 171        | amd No. 31, 1961, s 27; No. 21, 1982, s 2; No. 31, 2010, s 23   |
| s 172        | sub No. 31, 1961, s 28<br>amd No. 60, 1965, s 15; No. 21, 1982, s 2; No. 2, 1983, s 18  |
| s 173        | amd No. 12, 1933, s 36<br>sub No. 31, 1961, s 28<br>amd No. 21, 1982, s 2   |
| s 174        | amd No. 31, 1961, s 29; No. 31, 2010, s 23  |
| s 175        | amd No. 31, 1961, s 30; No. 76, 1970, s 11; No. 54, 1974, s 18; No. 2, 1983, s 19; No. 31, 2010, s 20   |
| s 175A       | ins No. 2, 1983, s 20   |

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| s 176                | amd No. 76, 1970, s 12; No. 87, 1973, s 12; No. 54, 1974, s 18; No. 20, 1976, s 11; No. 2, 1983, s 21                                      |
| s 176A               | ins No. 20, 1976, s 12<br>sub No. 2, 1983, s 22<br>amd No. 17, 1997, s 12; No. 31, 2010, s 23  |
| s 177                | amd No. 31, 1961, s 31; No. 54, 1974, s 18; No. 20, 1976, s 13; No. 2, 1983, s 23; No. 31, 2010, s 23; No. , 2011, s 6                     |
| s 178                | amd No. 31, 1961, s 32; No. 60, 1965, s 16   |
| s 179                | amd No. 21, 1982, s 2; No. 31, 2010, s 23  |
| s 180                | amd No. 20, 1976, s 14<br>rep No. 21, 1982, s 2  |
| pt VIA hdg           | ins No. 2, 1983, s 24<br>rep No. 60, 2001, s 9   |
| s 180A               | ins No. 2, 1983, s 24<br>amd No. 17, 1996, s 6<br>rep No. 60, 2001, s 9  |
| ss 180B – 180E       | ins No. 2, 1983, s 24<br>rep No. 60, 2001, s 9   |
| ss 182 – 183         | amd No. 54, 1974, s 18   |
| s 183A               | ins No. 5, 1997, s 10  |
| s 184                | amd No. 54, 1974, s 18   |
| s 185                | amd No. 53, 1989, s 3; No. 17, 1996, s 6; No. 31, 2010, s 23   |
| s 186                | amd No. 54, 1974, s 18; No. 21, 1982, s 2; No. 17, 1996, s 6; No. 31, 2010, s 23   |
| s 187                | amd No. 54, 1974, s 18; No. 17, 1996, s 6  |
| s 187A               | ins No. 12, 1933, s 37<br>amd No. 54, 1974, s 18; No. 21, 1982, s 2; No. 17, 1996, s 6   |
| s 188                | amd No. 54, 1974, s 18; No. 61, 1978, s 4; No. 48, 1986, s 9; No. 29, 1990, s 7; No. 17, 1996, s 6; No. 40, 2010, s 64; No. 31, 2010, s 23 |
| pt VII<br>div 3 hdg  | ins No. 51, 2001, s 3  |
| ss 189 – 191         | rep No. 40, 1991, s 7<br>ins No. 51, 2001, s 3<br>amd No. 31, 2010, s 23; No. 2, 2012, s 11  |
| s 192                | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7<br>ins No. 51, 2001, s 3  |
| s 193                | rep No. 40, 1991, s 7  |
| s 194                | amd No. 12, 1933, s 2<br>rep No. 87, 1981, s 3   |
| ss 195 – 196         | rep No. 87, 1981, s 3  |
| s 197                | amd No. 87, 1981, s 3<br>rep No. 40, 1991, s 7   |
| s 198                | amd No. 60, 1965, s 17<br>rep No. 40, 1991, s 7  |
| s 199                | rep No. 40, 1991, s 7  |
| s 200                | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
| pt VII<br>div 4A hdg | ins No. 5, 1997, s 11  |
| s 201A               | ins No. 5, 1997, s 11  |
| pt VII<br>div 4 hdg  | sub No. 54, 1974, s 14   |
| s 201                | sub No. 54, 1974, s 15<br>amd No. 21, 1982, s 2<br>rep No. 2, 1983, s 25   |
| s 201A               | amd No. 31, 2010, s 21   |

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| s 202       | amd No. 60, 1965, s 18; No. 21, 1982, s 2; No. 12, 2010, s 3   |
| s 203       | amd No. 12, 1933, s 2; No. 54, 1974, ss 16 and 18; No. 37, 1980, s 22;<br>No. 21, 1982, s 2; No. 2, 1983, s 26; No. 31, 2010, s 23 |
| pt VIII hdg | ins No. 31, 2010, s 22   |
| s 204       | ins No. 31, 2010, s 22   |
| pt IX hdg   | ins No. 5, 2011, s 7   |
| s 205       | ins No. 5, 2011, s 7   |
| sch hdg     | om No. 87, 1973, s 12  |
| sch 1       | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
| sch 2       | sub No. 60, 1965, s 19<br>amd No. 76, 1970, s 13<br>rep No. 54, 1974, s 17   |
| sch 3       | ins No. 50, 1973, s 10<br>amd No. 87, 1973, s 12; No. 21, 1982, s 2; No. 40, 2010, s 65; No. 31, 2010,<br>s 23                     |